

180  
No. 782

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

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ALFRED YOUNG CHICK AND WILLIAM  
FLANDERS LEWIN, COPARTNERS UN-  
DER THE FIRM NAME AND STYLE OF A.  
Y. CHICK & COMPANY,

*Appellants,*

VS.

THE MERCANTILE TRUST COMPANY  
AND THE SAN JOAQUIN ELECTRIC  
COMPANY,

*Appellees.*

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TRANSCRIPT OF RECORD.

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Upon Appeal from the United States Circuit Court for  
the Southern District of California.

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FILMER BROTHERS CO. PRINT, 424 SANSOME STREET, S. F.

FILED

JAN 21 1902



Records of Circuit  
Court of Appeals

180.



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*United States Circuit Court of Appeals, for the  
Ninth Circuit.*

ALFRED YOUNG CHICK and WILLIAM FLANDERS LEWIN, Copartners  
Under the Firm Name and Style of  
A. Y. CHICK & COMPANY,  
Appellants.

vs.

THE MERCANTILE TRUST COMPANY, as Trustee, and the SAN JOAQUIN ELECTRIC COMPANY,  
Appellees.

**Order Extending Time to Docket Cause.**

Good cause therefor appearing, it is hereby ordered that the time heretofore allowed said appellant to docket said cause and file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same hereby is enlarged and extended until and including the 26th day of December, 1901.

Dated at Los Angeles, California, November 2d, 1901.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

[Endorsed]: No. 782. United States Circuit Court of Appeals for the Ninth Circuit. Alfred Young Chick and Wm. Flanders Lewin, Copartners etc., vs. The Mercantile Trust Co., Trustee, etc. Order Extending Time to Docket Cause. Filed November 6th, 1901. F. D. Monckton, Clerk.

**Citation.**

UNITED STATES OF AMERICA—ss.

To the Mercantile Trust Company, as Trustee, and The San Joaquin Electric Company, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, on the 26th day of November, A. D. 1901, pursuant to an order allowing an appeal entered in the clerk's office of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, from the order and decree entered by said Court on the 3d day of September, 1901, in that certain cause, being in equity No. 916, wherein Alfred Young Chick and William Flanders Lewin, copartners under the firm name and style of A. Y. Chick & Company, are intervenors and appellants, and you, The Mercantile Trust Company, as Trustee, are complainant and appellee, and you, The San Joaquin Electric Company, are defendant and appellee, to show cause, if any there be, why the order and decree against said appellants in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable OLIN WELLBORN, United States District Judge for the Southern District of California, and one of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 28th

day of October, A. D. 1901, and of the Independence of the United States, the one hundred and twenty-sixth.

OLIN WELLBORN,

United States District Judge for the Southern District of California.

Service of the within citation is hereby acknowledged this 30th day of October, 1901.

CHAS. MONROE,

Per W. J. LUNDY,

Solicitors for Complainant.

BICKNELL, GIBSON & TRASK,

Solicitors for Defendant.

[Endorsed]: In the United States Circuit of Appeals for the Ninth Circuit. Alfred Young Chick et al., Appellants, vs. The Mercantile Trust Company, as Trustee, and The San Joaquin Electric Company, Appellees. Citation-Filed October 30, 1901. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States of America,  
of the Ninth Judicial Circuit, in and for the Southern  
District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	Complainant,	} No. 916.
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	Defendant,	
ALFRED YOUNG CHICK and WILL- IAM FLANDERS LEWIN, Copartners Under the Firm Name and Style of A. Y. CHICK & COMPANY,	Intervenors.	

**Bill of Complaint.**

To the Judges of the Circuit Court of the United States  
for the Southern District of California, Sitting in  
Equity:

Your orator The Mercantile Trust Company, a corpora-  
tion organized and existing under and by virtue of the  
laws of the State of New York, and a citizen and resident  
of said State, brings this its bill of complaint against  
San Joaquin Electric Company, a corporation organized  
and existing under and by virtue of the laws of the State  
of California, and thereupon your orator complains and  
says:



1. That your orator is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its office or place of business in the city of New York, and is a citizen and resident of said city and State. That the San Joaquin Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal office or place of business at Fresno, in San Joaquin County, in said State of California, and is a citizen, resident, and inhabitant of said State and of the Southern District thereof.

II. Your orator further shows that on or about the first day of July, 1895, the defendant made, executed, and issued its certain 1,600 bonds, each for the principal sum of \$500, and for the principal sum in the aggregate thereof of \$800,000, each bearing date the first day of July, 1895, wherein, and in each of said bonds the said defendant, for value received, promised to pay to the bearer, the sum of \$500, in gold coin of the United States of America, of the then standard of weight and fineness, on the first day of July, 1915, at the office of your orator in the city of New York, together with interest thereon at the rate of six per cent per annum, payable semi-annually in like gold coin on the first days of January and July in each year on presentation and surrender of the interest coupons attached to said bonds as they severally should become due, said interest also being payable at the office of your orator.

III. That in order to secure the payment of the principal and interest of said bonds, the said defendant, on

or about the first day of July, 1895, made, executed, and delivered to your orator, as trustee, a certain mortgage or deed of trust, dated on that day, wherein and whereby it granted, bargained, sold, assigned, set over, released, aliened, conveyed, and confirmed unto your orator, and its assigns and successors in trust, for the purposes in said mortgage set forth,

“All the works, contracts, lines, machinery, franchises, and property, real and personal, now owned or controlled or to be hereafter acquired by the San Joaquin Electric Company.

“Also the S. W.  $\frac{1}{4}$  of the S. E.  $\frac{1}{4}$  of section 19, township 8 south, range 23 east, Mt. Diablo base and meridian. Also all water rights, headgates, sluices, flume ditches, aqueducts, waste gates, weirs, bulkheads, reservoirs, reservoir embankments, pressure boxes, penstocks, reservoir sites, possessory rights, rights of way, privileges and easements; also all valves, gates, pipes, pipe-lines, receivers, water-wheels, tail-races, power-houses, buildings, power-house sites, mill-sites, with all generators, dynamos, exciters, governors, transformers, switches, switch-boards, wires, poles, insulators, and cross arms now owned or to be hereafter acquired by the said San Joaquin Electric Company. All of the above-named property being in Madera County, California.

“Also all roads, trails, bridges, poles, pile-lines, cross-arms, insulators, wires, all rights of way, easements, privileges, franchises, and possessory claims, all sub-stations, with all switches, switchboards, transformers, regulators, and equipments, all motors, dynamos, gen-

erators, feeders, mains, circuits, buildings, tools, and appliances, wires, wire-lines, lamps, meters, now owned or to be hereafter acquired by the San Joaquin Electric Company. All the above property being in Fresno County, California.

“Also all the shares of stock of the Fresno Water Company of Fresno, California, owned and held by or on behalf of the San Joaquin Electric Company, also all other bonds, stocks or securities owned or hereafter to be acquired by and held by or for the benefit of the San Joaquin Electric Company.”

To have and to hold all such property, and all other possession, franchises and claims acquired or to be acquired, and all other premises in said mortgage expressed to be conveyed and assigned unto the use of your orator and its successors in trust, according to the nature, terms and effect in said mortgage expressed, of and concerning the same, for the benefit, protection and security of the persons holding the said bonds or any of them. That said mortgage or deed of trust was duly recorded in the proper offices in the counties in which the property described therein and thereby conveyed, or intended so to be, was situated. That a copy of said mortgage or deed of trust, marked Exhibit “A,” is hereto annexed and made a part of this bill of complaint.

IV. Your orator further shows that of the bonds provided to be issued under and secured by said mortgage or deed of trust, or intended so to be, 1110 bonds, numbered from 1 to 1110, inclusive, for the principal sum in the aggregate of \$555,000, were duly executed and issued

by said defendant and were certified by your orator as trustee under said mortgage or deed of trust, and your orator is informed and verily believes are now outstanding in the hands of bona fide holders thereof for value.

V. Your orator further shows that in and by said mortgage or deed of trust it was, among other things, provided that in case the said defendant, or its successors should make default in the payment of any interest on any of said bonds, according to the tenor thereof, the payment thereof having been demanded according to the terms thereof, or should make a breach in any of the covenants or agreements in said mortgage contained by it to be done or performed, and such default or breach should continue for a period of six months, that then and thereupon the principal of all of said bonds then outstanding and unpaid, might, at the election of the trustee, or at the request of one-tenth in amount of the bonds then outstanding and secured thereby become immediately due and payable.

VI. That in and by said mortgage or deed of trust it was further provided that if the defendant or its successors should make default in the payment of the principal or any part thereof, or any installment of interest, or any part thereof, and such default should continue for a space of six months after maturity, and demand therefor, it should be the duty of the trustee, upon request and indemnification in said mortgage provided, to proceed in any proper court to foreclose said mortgage, and that it, the said trustee, your orator, should be entitled to the appointment of a receiver and specific per-

formance of all the covenants therein contained, and the said trustee might, in case of default, apply to any court having competent jurisdiction for instructions as to matters not therein expressly provided for.

VII. Your orator further shows that on or about the first day of January, 1899, there fell due a semi-annual installment of interest upon said bonds, represented by the coupons attached thereto, amounting to the sum of \$16,650.00, which amount of interest the defendant refused and neglected to pay, although payment thereof was duly demanded, and that a like default occurred on the first day of July, 1899.

VIII. And your orator further shows that on or about the 11th day of July, 1899, said default having continued for a period of more than six months, and your orator having been requested so to do by the holders of more than a majority of the bonds outstanding and secured by said mortgage or deed of trust, or intended so to be, under the power and authority given to it by said mortgage or deed of trust, elected and declared that the principal of all the bonds then outstanding and unpaid should become immediately due and payable, and served notice of such election upon the defendant.

IX. Your orator further shows, upon information and belief, that the defendant San Joaquin Electric Company, the defendant herein, is insolvent and wholly unable to pay its present or presently accruing indebtedness and liabilities, as well as the principal and interest of said bonds now due as aforesaid, and that the prop-

erty covered by the said mortgage or deed of trust, or intended so to be, is a slender and insufficient security for the payment of said indebtedness.

Your orator further shows, upon information and belief, that in addition to the amount represented by said bonds and coupons, said defendant is indebted to sundry and divers persons in large sums, which debts have been incurred in the operation of the business of the said defendant, and which debts the said defendant is wholly unable to pay. That by reason of the insolvency of the said defendant, it is necessary, for the proper protection of the holders of the bonds and coupons secured by the mortgage or deed of trust given to your orator as aforesaid, that a receiver or receivers of the property of the said defendant San Joaquin Electric Company should be appointed with the powers given to such receiver or receivers in like cases under the course and practice of this court.

X. And your orator further alleges that the matter in controversy herein exceeds five thousand dollars, exclusive of interest and costs.

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this kind are properly cognizable and relievable, your orator therefore prays that the said mortgage may be decreed to be a lien upon all the property mentioned and described therein and upon all property, real, personal or mixed, rights, franchises, lands, titles, railroad branches, extensions, tolls, in-

comes, rents and issues of the said electric company, defendant herein, securities, properties, choses in action, leases and leasehold interests described in said mortgage, and that said defendant may be decreed to pay unto your orator, for the holders of the bonds secured by said mortgage to your orator, whatever may be due for interest on the bonds secured by the aforesaid mortgage, together with all the costs and expenses in this behalf incurred and expended; and, in default, thereof, that the defendant above named and all persons claiming under it may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the property, rights and franchises covered by said mortgage, and every part and parcel thereof, and that all and singular the said mortgaged property, with the appurtenances, property and effects, rights, immunities and franchises in said mortgage mentioned may be sold under the decree of this Honorable Court, and that the trustee, after deducting from the proceeds of sale the costs and expenses of said sale and all lawful expenses and charges incurred by said trustee in the execution of the trust hereby created and the reasonable compensation then due the trustee, and enough to indemnify the trustee from all liability arising from the execution of the said trust shall apply so much of the proceeds of said sale as may be necessary to the payment of the principal and interest then unpaid on the bonds secured thereby then outstanding, ratably, to the holders thereof, without discrimination or preference, and shall pay over any surplus to the defendant or to whomsoever shall be entitled to receive the same.

And your orator further prays that an account may be taken of the bonds secured by said mortgage and of the amount due on said bonds for principal and interest, or either.

And your orator further prays that, during the pendency of this suit, a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises and immunities of the said defendant, and its tolls, incomes, rents and issues, and of all other property included in and covered by the said mortgage within the jurisdiction of this Honorable Court; and that the said defendant and all other persons having possession thereof may be decreed to make such transfer or conveyance to such receiver, when appointed, and to the purchaser of said property at any sale which may hereafter be decreed to be made herein, as may be necessary and proper to put them or any of them in possession and control of said property.

And your orators further pray that a writ of injunction issuing out of and under the seal of this Honorable Court, or issued by one of your Honors, directing, commanding, enjoining and restraining the defendant herein, and its officers, directors and agents, and all other persons whomsoever, from interfering with, transferring, selling and disposing of any of the property of the said defendant, or from taking possession of, levying upon, or attempting to sell, by judicial process or otherwise, any portion of the property of the said de-



fendant, and that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and to this Honorable Court shall seem just.

And may it please your Honors to grant unto your orator a subpoena of the United States of America, issuing out of and under the seal of this Honorable Court, directed to the defendant San Joaquin Electric Company, and therein and thereby commanding it on a day certain to be named therein and under a certain penalty to be and appear before this Honorable Court, then and there to answer (but not under oath, such oath being hereby expressly waived) all and singular the premises, and to stand to and perform and abide by such order, direction and decree as may be made against it in the premises and as shall seem meet and agreeable to equity and good conscience, and that your orator may have such other or further relief, or both, as to your Honors shall seem just and equitable.

And your orator, as in duty bound, will ever pray, etc.

[Seal] THE MERCANTILE TRUST COMPANY,

By H. C. DEMING,

Vice-President.

Attest: E. R. ADEE,

Secretary.

ALEXANDER & GREEN,  
STEPHEN M. WHITE, and  
CHAS. MONROE,

Complainants' Solicitors.

W. W. GREEN,  
Of Counsel.

United States of America, }  
Southern District of New York. } ss.

Henry C. Deming, being duly sworn, says, that he is vice-president of the complainant, The Mercantile Trust Company, named in the foregoing bill; that he has read the same and knows the contents thereof, and that the allegations therein contained, so far as they relate to his own act are true, and so far as they relate to the acts of others, he believes them to be true.

H. C. DEMING.

Sworn to before me this 8th day of August, 1899.

[Seal]

GEO. V. TURNER,

Notary Public, N. Y. Co., No. 45.

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Exhibit "A."

INDENTURE

between the

SAN JOAQUIN ELECTRIC COMPANY,

of

FRESNO, CALIFORNIA,

and

THE MERCANTILE TRUST COMPANY,

NEW YORK.

Dated July 1st, 1895.

This indenture, made this first day of July, 1895, by and between the San Joaquin Electric Company, a corporation duly organized and existing under the laws of the State of California, party of the first part hereinafter referred to as the Electric Company and The Mercantile Trust Company, of the city and State of New York, a corporation existing under and by virtue of the laws of the State of New York, party of the second part, trustee, hereinafter referred to as trustee, witnesseth:

That whereas, said Electric Company has full power to borrow money and issue its bonds therefor and secure the same by way of mortgage or deed of trust upon its property:

And whereas, the stockholders of said Electric Company at their meeting held at the office of the company on the seventeenth day of June, 1895, unanimously adopted the following resolutions:

Resolved: First.—That the bonded indebtedness of this corporation be and the same is hereby created in the amount of eight hundred thousand dollars (\$800,000).

Second.—That the directors of this corporation be and they are hereby authorized and empowered for and in the name of said corporation and as and for its corporate act, to borrow money and issue bonds therefor to the amount of eight hundred thousand dollars (\$800,000), the said bonds to be of such denomination and form as the said board of directors shall determine upon, and to bear interest at the rate of six per cent (6%) per annum

payable semi-annually, said bonds to become due and payable twenty years from the date thereof.

Third.—And the said directors are further authorized, empowered, and directed, in order to secure the payment of the said bonds, to make, execute, and deliver on behalf of said San Joaquin Electric Company, a first mortgage upon all the real and personal property, and all leaseholds, franchises, rights, lands, machinery, pipes, wires, poles, mains and conduits belonging to said corporation and such as it may hereafter acquire; and to sell and dispose of such bonds in whole or in part at such times and at such prices as they may consider most expedient, and that such bonds and mortgages contain such terms and conditions as the board of directors may determine upon.

And whereas, at a meeting of the board of directors of the San Joaquin Electric Company, duly called and held at the office of said company on the 19th day of June, 1895, a quorum being present, said board of directors unanimously adopted the following resolutions:

Resolved: First.—That the resolutions passed and adopted by the stockholders of the San Joaquin Electric Company, at a meeting held on the seventeenth day of June, authorizing the board of directors to borrow money and issue bonds, be and the same is hereby approved, ratified and adopted.

Second.—That the president and secretary of the San Joaquin Electric Company be, and they are hereby authorized, empowered, and directed to cause to be prepared and to duly execute and deliver to the Mercantile Trust

Company, trustee, sixteen hundred (1600) bonds of the denomination of five hundred dollars (\$500) each, bearing date the first day of June, 1895, and numbered from 1 to 1600, both numbers inclusive, each of said bonds shall bear interest at the rate of six per cent per annum, payable semi-annually, on the first days of January and July in each year, such interest to be evidenced by forty interest coupons to be attached to each bond.

Third.—That the president and secretary of this corporation be and they are hereby authorized and directed to procure to be engraved and to issue the bonds of this corporation of the number of sixteen hundred (1600) in the sum of five hundred dollars (\$500) each of said bonds to be dated on the first day of July, 1895, and to be payable at the expiration of twenty (20) years from the date thereof, and to bear interest at the rate of six per cent per annum, payable on the first day of January and on the first day of July of each year, principal and interest payable in gold coin.

And they are further authorized and directed to cause the name of this corporation to be engraved or lithographed on said bonds, and to sign their names thereon for and on behalf of and as the act and deed of this corporation, and to attest the same by the seal of this corporation, and they are further authorized and directed to cause coupons for the payment of interest as it becomes due, to be attached to the said bonds, and also a trustee's certificate, and that said bonds shall be substantially of the tenor and form namely:

No. —

\$500.

UNITED STATES OF AMERICA,

State of California.

SAN JOAQUIN ELECTRIC COMPANY.

First Mortgage six per cent. Gold Bond.

The San Joaquin Electric Company of the city of Fresno, Fresno County, California, a corporation, duly organized under the laws of the State of California, for value received, hereby promises to pay the bearer the sum of five hundred dollars in gold coin of the United States of America, of its present standard of weight and fineness, on the 1st day of July, 1915, at the office of the Mercantile Trust Company, of the city of New York, and State of New York, together with interest on said sum from the date hereof at the rate of six per cent per annum, and payable semi-annually, in like gold coin, until the maturity of this bond, on the first days of January and July in each year, on presentation and surrender of the interest coupons hereto attached as they severally become due at the office of said Mercantile Trust Company in the city of New York. This bond is one of an issue of sixteen hundred bonds of like tenor, and numbered from 1 to 1,600, both inclusive, of an aggregate amount of eight hundred thousand dollars, duly and legally authorized by the stockholders of the San Joaquin Electric Company, issued and to be issued for the purpose of the payment of all the indebtedness of said company, and for the expen-

ditures which will be necessary in the future for extensions and permanent improvements of property of said company. The payment of each and all of the said bonds of said issue, equally and ratably, together with the interest thereon, without reference to the time when they shall be actually issued, is secured by a deed of trust or mortgage bearing date July 1, 1895, duly executed by the San Joaquin Electric Company to the Mercantile Trust Company, of New York, trustee, upon all the works, contracts, machinery, franchises and property, real and personal, then owned and controlled, or thereafter to be acquired by said company, and which said mortgage contains a provision for a sinking fund for the payment and retirement of said bonds.

This bond shall not become valid or obligatory until authenticated by the signature of said trustee to the certificate on the back thereof.

The San Joaquin Electric Company declares and hereby covenants and certifies that all acts, conditions, and things required to be done, performed or complied with as conditions precedent to the issue of this bond, have been regularly and duly done, performed and complied with, and that this bond is in all respects regular and valid.

In witness whereof, the San Joaquin Electric Company has caused this bond to be sealed with its corporate seal, signed by its president, attested by its secretary, and the interest coupons hereto attached to be executed with the

lithographed signature of its secretary this first day of July, 1895.

[Seal] SAN JOAQUIN ELECTRIC COMPANY,

By \_\_\_\_\_,

President.

Attest \_\_\_\_\_,

Secretary.

Subjoined to each of said bonds shall be interest coupons, duly authenticated with the lithographed signature of the secretary of the San Joaquin Electric Company and payable to bearer, in the following form:

No. ————— \$15.00

The San Joaquin Electric Company will pay to bearer fifteen dollars in gold coin of the United States on the first day of \_\_\_\_\_, at the office of the Mercantile Trust Company in the city of New York being for six months' interest on its six per cent Gold Bond No. ———.

\_\_\_\_\_,

Secretary.

And the blanks thereof so filled in as to make them fall due every six months from the date thereof, and that the facsimile signature of the secretary may be lithographed thereon, and that each of said bonds shall have a certificate endorsed thereon, signed by the said trustee or its successors, to the following effect:



TRUSTEE'S CERTIFICATE.

This certifies that the within bond is one of the bonds described in the within mentioned mortgage or deed of trust.

THE MERCANTILE TRUST COMPANY,

Trustee.

By \_\_\_\_\_,

Vice-President.

Fourth.—That to secure the payment of the principal and interest of said bonds, the president and secretary of the San Joaquin Electric Company shall make and execute and deliver to the Mercantile Trust Company of the city and State of New York, as trustee, the mortgage or deed of trust of the San Joaquin Electric Company to The Mercantile Trust Company, trustee, upon all the property, real and personal, of the company, and all leaseholds, and all the franchises and rights of the said company, together with all its lands, machinery, pipes, wires, poles, mains, conduits whether the same are now owned, or shall be hereafter acquired by it, with all its incomes and profits; and when so prepared, the president and secretary of the company are hereby authorized and directed to execute the same in the name of the company and under the corporate seal thereof. The said trust deed may contain such other stipulations as may be necessary to most amply secure said bonds.

Fifth.—That in addition to the payment of interest on said bonds, a sinking fund to be in charge of the trustee shall be created and established to provide for the pur-

chase or retirement or redemption of said bonds, and that beginning with the first day of July, 1905, and thenceforth during the existence of any portion of said mortgage debt, an amount equal to ten per cent of the gross receipts of the said San Joaquin Electric Company shall be paid over in semi-annual payments to the trustee on the first days of January and July, in each and every year, to be applied to the purchase, retirement and redemption of the principal and interest on said bonds, but in no case at a rate exceeding par and accrued interest.

And whereas, said bonds have been duly executed and delivered to the trustee, as in said resolutions authorized and directed:

Now, therefore, the said San Joaquin Electric Company, party of the first part hereto, in order to secure the payment of the principal and interest of said bonds, and in consideration of the premises, and in further consideration of the sum of one dollar in hand paid by the said trustee, party of the second part aforesaid, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, set over aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, set over, release, convey, and confirm unto the said The Mercantile Trust Company, party of the second part hereto, and its assigns and successors in trust, for the purposes hereinafter set forth:

All the works, contracts, lines, machinery, franchises, and property, real and personal, now owned or controlled or to be hereafter acquired by the San Joaquin Electric Company.

Also the S. W.  $\frac{1}{4}$  of S. E.  $\frac{1}{4}$  of section 19, township 8 south, range 23 east, Mt. Diablo base and meridian. Also all water rights, headgates, sluices, flume, ditches, aqueducts, waste gates, weirs, bulkheads, reservoirs, reservoir embankments, pressure-boxes, penstocks, reservoir sites, possessory rights, rights of way, privileges and easements; also all valves, gates, pipes, pipe-lines, receivers, water-wheels, tail-races, power-houses, buildings, power-house sites, mill-sites, with all generators, dynamos, exciters, governors, transformers, switches, switchboards, wires, poles, insulators, and cross-arms now owned or to be hereafter acquired by the said San Joaquin Electric Company. All of the above-named property being in Madera County, California.

Also all roads, trails, bridges, poles, pile-lines, cross-arms, insulators, wires, all rights of way, easements, privileges, franchises and possessory claims, all sub-stations, with all switches, switchboards, transformers, regulators, and equipments, all motors, dynamos, generators, feeders, mains, circuits, buildings, tools and appliances, wires, wire lines, lamps, meters, now owned or to be hereafter acquired by the San Joaquin Electric Company. All the above-named property being in Fresno County, California.

Also all the shares of stock of the Fresno Water Company of Fresno, California, owned and held by or on behalf of the San Joaquin Electric Company, also all other bonds, stocks or securities owned or hereafter to be acquired by and held by or for the benefit of the San Joaquin Electric Company.

All capital stock of any corporation or corporations so held as aforesaid, held by or standing in the name of said

party of the first part, upon the books of the corporation or corporations issuing the same, shall from time to time—until and unless the bonds of the San Joaquin Electric Company hereby secured shall be in default—be voted at all meetings of the corporation issuing the said stock in accordance with the directions of the board of directors of the San Joaquin Electric Company.

In case default shall be made on the bonds hereby secured, the trustee is empowered to have the stock reissued in its own name, and thereafter to vote the stock as it may be advised.

The certificates of stock herein required to be placed with the said trustee for the better security of the lien of this indenture shall be registered in the name of the San Joaquin Electric Company or its president, and shall be first assigned in blank by said party of the first part or its president, and delivered to said trustee, and said trustee shall thereupon stamp each and every certificate as follows: "Held by The Mercantile Trust Company under the trusts declared in the mortgage or deed of trust made with the San Joaquin Electric Company to said Mercantile Trust Company bearing date the first day of July, 1895."

A certificate signed by the president and secretary of the said San Joaquin Electric Company shall be conclusive evidence to the trustee of the amount and character of the stocks and bonds and securities belonging to or hereafter acquired by the said San Joaquin Electric Company.

To have and to hold, all and singular, the above property, and all other possession, franchises, and claims acquired and to be acquired, and all other premises hereinbefore expressed, to be conveyed and assigned unto the use of the Mercantile Trust Company and its successors in trust, according to the nature, terms and effect hereinafter expressed, of and concerning the same, for the benefit, protection and security of the persons who hold said bonds or any of them, and for further carrying into effect the conveyance and assignment hereinafter expressed to be made, said Electric Company does hereby appoint the said trustee and its successor in trust, the attorney or attorneys of said electric company to ask and receive payment and delivery of all and every sums of money, goods, chattels, and effects hereinbefore expressed to be assigned and transferred, and to give effectual release and discharge therefor, and for all and any of the purposes aforesaid, or of this instrument, to appoint an attorney or attorneys, or an agent or agents, and from time to time to revoke such appointment, and to use the name of the Electric Company and generally to act in relation to the premises as it or they shall see fit.

And it is hereby agreed and declared that the said trustee and its successors, for the time being, in said trust respectively, shall stand possessed of an interest in all and singular the premises hereinbefore expressed to be conveyed and assigned upon and for the trusts, intents and purposes, and subject to the powers and conditions following, that is to say:

Article I. Until the said Electric Company, or its successors, shall make default in the payment of some principal money or interest of the said bonds, or some of them, according to the tenor thereof, or shall make default in or breach in the performance or observance of any other condition, obligation or requirements by the said bonds, or by this present deed imposed on the said Electric Company, or its successors, in reference to said bonds, and until such default shall have continued for a period of six months, the trustee and every other trustee from time to time of these presents who are hereinafter referred to as the trustee, shall (except as hereinafter provided) permit and suffer the Electric Company and its successors, to possess, manage, operate and enjoy the said works and property of the said San Joaquin Electric Company with its equipments and appurtenances and the premises, properties, and franchises hereinbefore described as conveyed hereby, and to receive, take, and use the incomes, rents, issues and profits thereof in the same manner and with the same effect as if this deed had not been made.

Article II. Said Electric Company covenants and agrees that so holding, possessing and enjoying the property and franchises hereby mortgaged, or intended so to be, it will pay all taxes and assessments thereon during the continuance of this instrument except taxes on the interest of the said trusts therein by reason of this mortgage; that it will not suffer any lien superior to the lien hereby created to attach to said property or franchise, or to any part thereof; that it will keep and maintain the property hereby mortgaged in good order and condition;

that it will keep said electric plant in active operation, and will duly keep and observe all the laws and ordinances lawfully enacted in any way relating to or affecting the franchises, easements, immunities and privileges aforesaid; that it will at all times hereafter provide for and pay the principal and interest of and upon the bonds hereby, or intended hereby to be secured as the same shall become due and payable, according to the form and tenor thereof, and that it will keep all property hereby mortgaged, liable to be destroyed by fire, reasonably insured, and in case of destruction by fire, all insurance money shall be promptly applied to replace such property as may have been injured or destroyed, or to purchase other property needed for the maintenance or operation of said electric plant, and such replaced property shall immediately become subject to this mortgage.

And said Electric Company further covenants and agrees that it will, upon the request of the trustee, do and perform all acts necessary or proper to keep valid the lien hereby created, or intended to be created, and that it will, upon the request of the trustee, at any time hereafter and as often as it may be necessary, make, execute and deliver to the trustee any other or further deed or deeds, acts, conveyances or assurances which may be reasonably desired, advised or required for the purpose of carrying into full effect the object and purposes of this indenture.

Article III. Bonds to the amount of \$415,000, being numbered from 1 to 830, inclusive, shall be certified to by the trustee and issued immediately on the execution of this instrument and delivered to the president of the San Joaquin Electric Company or his order.

Bonds to the amount of \$35,000, being numbered from 831 to 900, both inclusive, shall be issued, certified and delivered to the president of the San Joaquin Electric Company or his order, upon the order of the board of directors, attested by the president and secretary of said company, whenever they may be required for the general purposes of said company.

The remaining \$350,000, in amount of said bonds numbered from 901 to 1600, both inclusive, shall remain in the hands of the trustee in trust to be issued in payment of the cost of betterments or extensions or additional property or investments acquired by the San Joaquin Electric Company as hereinafter provided. Said trustee shall certify to the bonds so held by it in trust and issue the same only upon the affidavit of the president and secretary of the San Joaquin Electric Company showing that the extensions or betterments have been ordered by the directors or the property or investments acquired, and the sum or amount of bonds required to meet the cost of such extensions or betterments, or property or investments acquired, and showing that such extensions and betterments have been made or such property or investments acquired, and that the net annual revenue of the said San Joaquin Electric Company amounts to at least enough to pay six per cent per annum upon all the bonds then outstanding, together with the bonds proposed to be issued, which affidavit shall be satisfactory to said trustee of the facts therein stated.

Article IV. For the purpose of providing a sinking fund for the redemption of a portion of said bonds at or



prior to maturity the San Joaquin Electric Company agrees, that, beginning with the receipts of the said company on the first day of July, 1905, and continuing annually thereafter, it will pay to the trustee ten per centum per annum of the gross receipts of the said company, on the first day of January and July in each and every year until the maturity of said bonds. The trustee shall annually employ the sinking fund in its hands in purchasing bonds secured hereby at not exceeding par and accrued interest, and all bonds so purchased shall forthwith be canceled by said trustee and the numbers certified to the company. Such portion of said sinking fund as shall come into the hands of the trustee and not be used by it in the purchase of bonds as hereinbefore provided, shall be invested by it in interest-bearing securities, and the sum so invested and the interest which may accrue thereon, shall be held by the trustee as a part of said sinking fund, but no such investment shall be made except on the approval first obtained of said Electric Company.

Article V. And whenever the Electric Company or its successors shall make default in the payment of the said bonds or of the interest which shall accrue thereon, and such default shall continue as aforesaid for the period of six months, or if, and whenever, the Electric Company or its successors shall make default or breach in the performance or observances of any other condition, obligation or requirement herein contained, and such default shall continue for the period of six months, then, and in either of such cases it shall be lawful for the trustee with or without the aid of court, or resort to judicial action,

to enter into and upon and to take possession of all and singular the property of every description, and all premises, rights, easements, privileges, and franchises hereinbefore expressed, to be conveyed and assigned, or any of them, or any part thereof, respectively, and to have, hold, and use the same, and to work and operate by its superintendents, managers, receivers, or servants, or other attorneys or agents, said system, and to conduct the business thereof, and to make from time to time such repairs and replacements, and such useful alterations, additions, and improvements, and after deducting and defraying all the expenses thereof, and all payments which may be made for charges or liens of any kind prior to the lien of these presents, and all other expenses and outgoings whatsoever in relation thereto, as well as just compensation for its own services, and for the services of such attorneys and counsel, and all other agents and persons as may have been employed by it, the said trustee shall apply the balance of the moneys arising from such collections and receipts to the payment of any matured and unpaid coupons ratably and without discrimination. If, after the satisfaction of said coupons as herein provided, a surplus shall remain, the trustee shall, during its possession of said property, retain said surplus for the payment of any unmatured coupons as the same may become due, or otherwise dispose of said surplus as any court of competent jurisdiction to which the trustee may apply shall order.

Article VI. In case said Electric Company or its successors shall make default in payment of any interest or any of the said bonds according to the tenor thereof, the

payment thereof having been demanded according to the terms thereof, or in case said Electric Company, or its successors, shall make a breach in any of the covenants or agreements herein contained by it to be done or performed, and any such default or breach shall continue for a period of six months after such default or breach, then and thereupon the principal of all said bonds then outstanding and unpaid, may, at the election of the trustee, or at the request of the holders of one-tenth in amount of the bonds then outstanding and secured hereby, become immediately due and payable.

Article VII. It is hereby agreed and declared that it shall be the duty of the trustee to exercise the power of entry hereby granted, or the power to declare the bonds due and payable hereby granted, or both, or to proceed by suit or suits in equity or at law to enforce the rights of the bondholders in the several cases of default or breach on the part of the Electric Company, or its successors herein specified, in the manner and subject to the qualifications herein expressed, upon the requisition as herein prescribed, namely:

First.—If the Electric Company or its successors shall make default in the payment of some principal money or interest of said bonds, or some of them, according to the tenor thereof, or of the coupons annexed thereto, and such default shall continue for the period of six months above mentioned, in such case the trustee, acting upon its own volition, may, and upon a requisition in writing signed by the holder or holders of said bonds, to an aggregate amount of not less than one-tenth of the amount thereof,

and a proper indemnification of the trustee by such holder or holders against the costs or expenses to be by it incurred, it shall enforce the rights of the bondholders under these presents by entry, or suit or suits in equity, or at law, or under the power of sale herein granted, as it, being advised by counsel learned in law, shall deem most expedient for the holders of said bonds.

Second.—If the Electric Company or its successors shall make a default or breach in the performance or observance of any other condition, obligation or requirement by the said bonds, or by the present deed imposed on the Electric Company, or its successors, and such default or breach shall continue for the period of six months above mentioned, then, and in such case, the trustee may, and upon a requisition in manner aforesaid of not less than one-tenth in interest as aforesaid of the bondholders for the time being; and upon a proper indemnification of the trustee by such applying bondholders against the costs and expenses to be by it incurred, shall enforce the rights of the bondholders under these presents in the manner by the first clause of this article provided.

And it is hereby provided that no action taken by the trustee, or by the bondholders under this clause, shall prejudice or in any manner affect the power or rights of the trustee or of the bondholders in the event of any subsequent default or breach.

Article VIII. That if default shall be made in the payment of the principal or any part thereof, or of any installment of interest, or of any part thereof, and such default continue for the space of six months after maturity

and demand therefor, and the said trustee and a majority in interest of the outstanding bonds shall have declared the whole amount of the principal and accrued interest on said bonds due and payable as hereinbefore provided, and the same shall not be paid, then and thereupon, the said trustee shall have the power and authority to enter upon and take possession of all and singular the property and franchises hereby mortgaged or intended so to be, and the said party of the first part, its agents, successors and assigns are hereby authorized and required to deliver up the same, and the said trustee by itself, its agent or attorney, shall cause said mortgaged premises, property, and franchises to be sold at public auction in bulk or in parcels as it may deem advisable, in the counties of Fresno and Madera, in the State of California, after giving at least ninety days' notice of the time and place and terms of sale, and of the property to be sold, by publishing the same in one daily newspaper in the city of Chicago, in the State of Illinois, one daily newspaper in the city and State of New York, and one in the County of Fresno, and one in the county of Madera, California, once in each week in each newspaper for twelve successive weeks preceding the date for which said sale is advertised, and to adjourn said sale from time to time, if necessary, in the opinion of the trustee, if it shall be adjourned, to sell without further notice of the time and place of sale and to execute to the purchaser or purchasers at said sale a conveyance or assignment of the premises and property so sold, which shall be a bar against the party of the first part and all persons claiming by, through, or under it, of

all right, title, interest, claim or demand in and to the mortgaged premises and property, and any part thereof so sold, and out of the proceeds of such sale and the income that may have been received for the use of such property while in the possession of such trustee, after deducting just allowances and expenses of said sale, including attorney and counsel fees and all other expenses, advances, and liabilities which may have been made or incurred by the said trustee in taking care of said property, or in managing its business while in possession thereof, and all payments which may have been made by it for taxes and assessments and other proper charges upon the said property, premises and rights, interests, and franchises, or any part thereof, as well as reasonable compensation for its own services, then to pay the overdue coupons on said bonds, and then the principal and interest of said bonds ratably to the persons entitled thereto, as far as said proceeds will go for that purpose; and in case any surplus should remain to pay the same over to the party of the first part, its successors and assigns, at the office of said trustee.

But in case it shall not be deemed proper and expedient by said trustee to take possession of and sell the said mortgaged premises and property in pursuance of the power of sale herein granted, then it shall be the duty of said trustee, upon request and indemnification as hereinbefore provided, to proceed in any proper court to foreclose this mortgage, and it shall be entitled to the appointment of a receiver, and to the specific performance of all the covenants herein contained, and said trustee, may,

in case of default, apply to any court of competent jurisdiction for instruction as to the matters not herein expressly provided for.

And it is further expressly agreed that any bondholder or bondholders, or any one acting in their behalf, may become the purchaser of the property hereby conveyed at any foreclosure sale made hereunder, whether made by the trustee or by order of Court; and

It is further understood and agreed, that in no case whatever shall the party of the first part, its successors, or assigns, claim any right or advantage by reason of any valuation, appraisement, stay or extension laws that now exist or may hereafter be enacted in the State in which said property is situated or may be found, and said first party hereby releases to the second party its successors in trust all and every such right, claim, and demand; and

Hereby further agrees, that it will neither apply for an injunction nor any stay of the proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided.

It is hereby declared, that the receipts or receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers at any sale or sales made by the said trustee under or in pursuance of any or either of the provisions for that purpose herein contained, for his or their purchase money, and that said purchaser or purchasers, his or their heirs, executors or administrators, after payment thereof, and having such receipt, shall not be liable to see to its proper application or in any manner be answerable for any loss, misapplication or non-application of such

purchase moneys, or any part thereof, or be obliged to inquire into the necessity, expediency or authority of, or for any such sale.

In case of a foreclosure of this trust deed or mortgage and sale of the mortgaged premises and property hereby conveyed or assigned, the proceeds of any such sale shall be applied, first, in the payment of the expenses connected with said trustee, and all expenses and charges incurred by it as trustee; and secondly, in payment of the unpaid interest and principal of the said several bonds issued hereunder as herein provided; and if, after paying in full said bonds and interest there shall be any money remaining, the same shall be paid to the Electric Company, its successors or assigns.

Article IX. Said first party hereby reserves to itself the power and right to, and may at any time hereafter with the approval in writing of said trustee, its successor or successors, sell or exchange any of the chattels real conveyed or hereafter conveyed as aforesaid, or intended so to be, not necessary for the use or operation of said first party, and full power is conferred upon said trustee, its successor or successors, to release and discharge any such chattels real, so sold or exchanged, from the operation of these presents, but any lands or property acquired in substitution for any of said chattels real, so sold or exchanged, shall immediately become subject to the operation of these presents to the same effect as if originally embraced herein by specified description. It is, however, understood and agreed, that before any release or discharge is given of any chattels real secured by this mort-



gage, there shall be deposited with said trustee or its duly authorized agent, the entire proceeds of the sale of such chattels real, which said proceeds of sale shall be surrendered to said first party only upon the delivery of a certificate duly signed under seal of the secretary of said first party, and attested as correct by the treasurer of said first party, that an amount of chattels real, at least equal in value to the chattels real so to be released, has been purchased and fully paid for, and at the date of the surrender of said proceeds is under the operation of these presents, and the certificate of the grantor, under its corporate seal, attested by the signature of its president and secretary, shall be sufficient evidence respecting the facts herein mentioned to justify the trustee in acting.

But the Electric Company may, without action or consent by the trustee, in its discretion, sell and dispose of any items of personal property which have become unnecessary or unfitted for the uses of the Electric Company, and the purchaser thereof shall take the same freed from the lien of this instrument. The Electric Company covenants and agrees, however, that the avails and proceeds of such sales shall be forthwith invested in personal property of like general character, and that no sales shall be made of any personal property, the absence of which will in any manner impair the capacity or efficiency of the plant.

It is also further understood and agreed, that before any property under the operation of these presents which it is desired to substitute for other property acquired by said first party, shall be released from the lien of the

mortgage, the said first party shall deliver to the said trustee a certificate under seal of the secretary and attested by at least three resident property holders in the vicinity that said land or property so to be substituted are at least equal in value to the land or property for which release or discharge from these presents is desired, and shall furnish an abstract of title showing that said land is free from all incumbrances except the lien of this mortgage. But the trustee shall not be responsible for the correctness of said certificate and abstract, or either of them, and shall not be held responsible for any question relating to the title of said property.

The said trustee shall be under no obligation to recognize any person or persons, firm or corporation as a holder or holders of any of the bonds secured hereby, or to do or refrain from doing any act pursuant to the request or demand of any person or persons, firm or corporation, professing or claiming to be such holder or holders of any of said bonds, until such person or persons, firm or corporation shall have produced the said bond or bonds of which he or they claim to be the owner and holder, and deposits the same with the said trustee, and shall also have indemnified and saved harmless the said trustee to its full satisfaction from any and all costs, expenses, outlays, counsel fees and other proper disbursements, and any other liability growing out of the compliance by the trustee with such request or demand, as well as reasonable and proper compensation to it in that behalf.

Should any suit or other proceedings be brought in any court against the said trustee, as trustee under this in-

indenture, or by reason of any matter or thing growing out of, or connected with, the trust hereby created or the premises affected thereby, the trustee shall thereupon notify the party of the first part of the fact by delivering such notice at, or mailing the same to, the office of said party of the first part forthwith after its having received the same, and said trustee shall thereupon be under no obligation to enter an appearance by counsel or otherwise, or to defend said suit or other proceedings until indemnified to its satisfaction for so doing. But the said party of the second part may appear to and defend the same without such indemnity if it shall elect to do so, and be compensated therefor from the trust fund. It shall be no part of the duty of the trustee to see to the recording of this indenture as a mortgage or conveyance of real estate, or to the filing thereof as a chattel mortgage, or to do any other act which may be suitable or proper to be done for the continuing of the lien of this indenture, or for giving notice of the existence of such lien. Nor shall it be any part of the duty of the trustee to effect insurance against fire or other damage on any part of the mortgaged premises or property, or to renew any policies of insurance upon the same. The trustee shall be responsible only for reasonable diligence in the management of the trust hereby created, and shall not be answerable in any case for the act or default of any of its agents, attorneys or employees selected with reasonable care or discretion. The trustee shall be entitled to be reimbursed for all proper outlays of every sort and nature by it incurred or made in the proper discharge of this trust, and to receive

a reasonable compensation for any duty it may at any time perform in the discharge of the same, and all such fees, commissions, compensations and disbursements shall constitute a lien on the mortgaged property prior in right of payment to the bonds secured hereby.

All recitals herein contained are made on behalf of the party of the first part, and the party of the second part assumes no responsibility for the correctness of any statements herein contained.

It is mutually agreed by and between the parties hereto that the expressions, "the trustee," "the said trustee," and "said trustee," as used in these presents, shall be construed to mean the trustee for the time being.

Article X. Any trustee hereunder may resign or discharge itself or himself from the trust herein created by notice in writing to the said Electric Company, given three months before such resignation is to take effect, or such shorter time as the said Electric Company may accept as sufficient notice; and in case of a vacancy in the office of trustee by resignation or otherwise, a successor or successors may be appointed by the holders of the majority in amount of the bonds then outstanding, by an instrument in writing duly signed and acknowledged by them, which instrument shall be recorded in the office of the recorder of Fresno and Madera counties, in said State of California, or whatsoever office at said time, by the laws of said State, shall have the lawful custody of the records of said county of Fresno and county of Madera; or in case said majority do not agree upon the appointing of a new trustee or trustees within thirty days after a va-

cancy shall occur, then the said company or the holder or holders of any of said bonds may apply to any court of original jurisdiction in said State of California for the appointment of a new trustee or trustees, upon such notice as such court shall prescribe to be given, in such manner and upon or to such party or parties, person or persons as such Court shall direct, or upon such notice as shall be in accordance with the rules and practice of the Court, shall on its, his or their appointment thereby and thereupon become and be vested with all the powers, rights, estates, and interests granted to or conferred upon said party of the second part of these presents, without any further assurance or conveyance whatsoever.

Article XI. It is agreed by and between the Electric Company and the trustee herein, its successor or successors, that whenever the said Electric Company shall have paid and canceled all the bonds, interest coupons and all other evidences of indebtedness issued hereunder, and shall have kept and performed all other contracts, acts and agreements by it contracted herein to be performed on its part, then, and at such time on reasonable demand, said trustee shall reconvey unto the Electric Company its successors or assigns, or to whom it may direct, all and singular the property, right, title, hereditaments and appurtenances herein conveyed and incumbered, provided that all expenses of such conveyance shall be at the cost and charge of the Electric Company.

In testimony whereof, the parties to these presents have caused the same to be assigned by their respective presidents and their respective corporate seals to be affixed

hereto, attested by their respective secretaries the day and year first above written.

SAN JOAQUIN ELECTRIC COMPANY,

By JOHN J. SEYMOUR,

President.

Attest: J. M. COLLIER,

Secretary.

THE MERCANTILE TRUST COMPANY,

By HENRY C. DEMING,

Vice-President.

Attest: ERNEST R. ADEE,

Secretary.

State of California, }  
County of Fresno. }<sup>ss.</sup>

On this first day of July, in the year of our Lord one thousand eight hundred and ninety-five, before me, L. L. Cory, a notary public in and for said county of Fresno, State of California, residing therein duly commissioned and sworn, personally appeared John J. Seymour, who is personally known to me to be the President of the San Joaquin Electric Company, and J. M. Collier, who is personally known to me to be the secretary of the San Joaquin Electric Company the corporation described in and that executed the within instrument and they each severally acknowledged to me that such corporation executed the same and also acknowledged as such president and secretary that they signed and delivered the said instrument of writing as president and secretary of said company and caused the corporate seal of said company to be affixed thereto pursuant to authority given by the board of directors of said company, as their free and

voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

L. L. CORY,

Notary Public in and for the County of Fresno, State of California.

State of New York,

City and County of New York. }  
}

Before me, William H. Clarkson, a commissioner of deeds of the State of California, and a notary public, on this day personally appeared The Mercantile Trust Company, by its vice-president, known to me to be the person whose name is subscribed to the foregoing instrument as vice-president, and who acknowledged the same to be the act of the said corporation for the purposes and considerations therein expressed.

Given under my hand and seal of office this        day  
of                   , 1895.

WILLIAM H. CLARKSON,

Commissioner for the State of California, in New York,  
and Notary Public.

[Endorsed]: 916. U. S. Circuit Court, Southern District of California. The Mercantile Trust Company, as Trustee, against San Joaquin Electric Company. Original. Bill of Complaint. Filed August 21, 1899. Wm. M. Van Dyke, Clerk. Alexander & Green, Solicitors for Complainant.

*In the Circuit Court of the United States, Ninth Circuit,  
.. Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,
vs.	
SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.

**Petition of Alfred Young Chick and Wm. Flanders Lewin for  
Leave to Intervene.**

To the Judges of the United States Circuit Court, Ninth  
Circuit, Southern District of California.

The petition of Alfred Young Chick and William Flanders Lewin, doing business under the firm name and style of A. Y. Chick and Company, respectfully shows:

That on the 21st day of August, 1899, the complainant, The Mercantile Trust Company, as trustee, filed its bill of complaint in said court against the defendant San Joaquin Electric Company to foreclose a mortgage, or deed of trust, given and executed by said defendant to said complainant as trustee to secure the payment of certain bonds of the said defendant.

That the defendant in said cause being served with process of subpoena appeared to said bill but has not yet filed its answer thereto.

That it is alleged and set forth in said bill of complaint that there were issued and are outstanding of the bonds of



said defendant secured by the mortgage or deed of trust set forth and made part of the said bill of complaint, eleven hundred and ten bonds numbered from 1 to 1110, inclusive, for the principal sum in the aggregate of \$555,000.00.

That your petitioners, Alfred Young Chick and William Flanders Lewin, partners as aforesaid, are residents and citizens of the Kingdom of Great Britain, the complainant, The Mercantile Trust Company, is a corporation organized and existing under the laws of the state of New York, and is a resident of said State, and the defendant San Joaquin Electric Company is a corporation organized and existing under the laws of the State of California and is a resident of said State and of the said District.

That one John J. Seymour was by your Honorable Court appointed receiver of the property and business of the said defendant, upon the application of the said complainant in said cause, and is now acting as such receiver and as such has possession of the property of said defendant, described and set forth in the bill of complaint of said complainant in said suit, and has the full control and management of the business of said defendant; and one John S. Eastwood is now and was at the times hereinafter mentioned, an officer and the engineer of the said defendant, and is now acting as such engineer under the said receiver.

That your petitioners are now and have been for a long time, and were before the commencement of this suit, the owners of seventy-eight of the said bonds of the said defendant San Joaquin Electric Company, being a

part of the same series of bonds described in paragraph II of said complainant's bill of complaint and secured by the mortgage or deed of trust described in said bill.

That on or about the 1st day of January, 1899, there fell due a semi-annual installment of interest on said bonds so held and owned by said petitioners, which said interest is represented by the coupons attached thereto amounting to the sum of \$1,170.00, which amount of interest the said San Joaquin Electric Company neglected to pay although payment was duly demanded and although possessed of abundant means and resources so to do, and that a like default occurred on the 1st day of July, 1899, and said installment of interest would have been paid, as your petitioners are informed and believe, had not the scheme hereinafter set out been entered into.

That in the month of January, 1899, the said defendant San Joaquin Electric Company had and possessed ample means, income and resources to meet all of its just debts and liabilities due and to become due, including accrued and accruing interest on all of its said bonds, but instead of applying its said means to the payment of its obligations, including said interest, its officers and directors, including the said John J. Seymour and John S. Eastwood, conspired together for the purpose of diverting, and did unlawfully and fraudulently divert its funds to other purposes and purposely and intentionally avoided paying the interest on said bonds for the fraudulent and unlawful purpose of enabling certain of the bondholders of said company, as hereinafter alleged, to

bring and maintain a suit to foreclose the mortgage or trust deed securing the bonds of said company and to carry out a scheme entered into by said bondholders, and the said officers of said company to reorganize said company to the detriment and injury of said company and other of the bondholders thereof; and that the said officers of said company and the said bondholders unlawfully and fraudulently conspired together to induce the said complainant, The Mercantile Trust Company, as trustee, and its officers, to foreclose the said mortgage or trust deed by suit against said defendant company with the object and purpose of carrying out said scheme for the reorganization of said company in the interest of said bondholders and said officers of the defendant company. And in pursuance of said unlawful and fraudulent scheme the officers of said company having laid the foundation for the right of said trustee to foreclose said mortgage or deed of trust, the said bondholders for the purpose of bringing about said foreclosure and re-organization and being sufficient in numbers to authorize them so to do under the terms of said mortgage or trust deed, requested or caused the said trustee to be requested, by their agent or agents, to bring suit to foreclose the said mortgage and sell the property of the defendant company described therein, not for the purpose of enforcing the collection of the amount due from said defendant to its bondholders, but for the sole purpose of bringing about such reorganization of said company in the interest of the bondholders requesting such foreclosure, and with a view and for the purpose

of destroying the value of the bonds held by these petitioners and others similarly situated, it being fraudulently agreed between the said bondholders and the said John J. Seymour, president of said defendant company, and John S. Eastwood, the engineer thereof, that if the said officers of said company would facilitate the foreclosure of said mortgage they, the said officers, should have and receive one hundred thousand dollars of the stock of a corporation to be organized as a part of said scheme of reorganization, and the said officers in consideration of the said promises of stock of said new corporation to be organized, did facilitate the foreclosure of said mortgage by fraudulently and purposely and unnecessarily allowing the interest upon said bonds to become and continue delinquent for the term of six months whereby the right of the bondholders to request the foreclosure of said mortgage, and the right of the said trustee to foreclose the same, became and was perfect according to the terms of the said mortgage or deed of trust. And that it was further agreed and understood as a part of the said scheme of foreclosure and reorganization that the said John J. Seymour, president of said defendant company, should be, and he was in pursuance of said agreement, appointed the receiver in the suit to foreclose said mortgage as before alleged, upon the request of the said bondholders; and the said president and engineer of said defendant corporation are now and have been acting in collusion with said bondholders to bring about the foreclosure and sale of the property of said defendant corporation for the benefit of said

bondholders who have inaugurated and are carrying out said scheme of reorganization and for the purpose and with the object of destroying the value of the securities held by these petitioners and other bondholders similarly situated.

That the foreclosure proceedings in this action were conceived, commenced and are being prosecuted in the furtherance of said scheme for the reorganization of said defendant corporation; that said scheme was contrived by and between the said bondholders at whose suggestion, instigation and request, as alleged in the bill of complaint, this action was begun, and the officers and directors of said defendant corporation; that it was provided and agreed by and between the parties to this action and the said bondholders at whose instigation the said foreclosure proceedings were begun as aforesaid, that the said defendant company should default in the payment of interest on its bonds, that the said trustee, the complainant in said suit, should thereupon elect to declare the entire principal and interest of said bonds immediately due and payable, and thereupon proceed to foreclose said mortgage.

That in pursuance of said conspiracy the said defendant company failed and refused to pay the interest on its said bonded indebtedness as it became due, though possessed of abundant means and resources so to do, and permitted and connived and still permits and connives at the said proceedings; that a copy of said scheme and proposed plan of reorganization of said defendant is hereby annexed, marked "Exhibit A," and made a

part of this petition, and that the "certain parties in Fresno" referred to in said "proposed plan of reorganization," are the said John J. Seymour the president, and John S. Eastwood, the engineer of said defendant corporation, and that the said John J. Seymour is the receiver appointed by the court in this action.

That the complainant, The Mercantile Trust Company, had full notice and knowledge at the time it brought the said suit to foreclose said mortgage or trust deed that the purpose of such foreclosure was to bring about the reorganization of the said defendant company and not for the enforcement of the collection of the amount due upon said bonds.

That the said scheme for the reorganization of said defendant corporation was conceived and inaugurated and the plan thereof determined upon before default had been made in the payment of interest upon said bonds, or any of them, and that if said scheme and plan of reorganization had not been determined upon on suit would have been requested to be brought by said bondholders or would have been brought by the said Mercantile Trust Company as trustee to foreclose the said mortgage or trust deed, nor would the said officers of said corporation defendant have allowed the interest upon said bonds to become delinquent or to remain unpaid for such time as to entitle the said trustee or said bondholders to elect to declare the principal and interest of said bonds to be due and payable.

That the said defendant San Joaquin Electric Company is and was at the time said default in the payment

of interest accrued, solvent and possessed of ample property, income and resources to meet all of its just debts and liabilities including the interest on said bonds, and said interest might have been and would have been paid out of the ordinary revenues and receipts of said company but for the fraudulent conspiracy above set forth and the purpose and intention of the officers of said defendant company and the said bondholders to bring about the foreclosure of said mortgage and reorganization of said company for the benefit of said bondholders and to the detriment of other bondholders not entering into said scheme.

That by reason of the foregoing facts it is necessary to the protection of your petitioners that they be allowed to intervene and become parties to the said suit to protect their interests as the owners and holders of bonds of said company as aforesaid, and to prevent the sacrifice of the property of the said defendant corporation which is the only security for the payment of said bonds.

Wherefore, your petitioners pray that leave may be granted to them to intervene in the said suit and to file such pleadings in intervention as may be necessary to bring before the court the facts relating to the matters above set forth, and to protect the interests of the petitioners and other bondholders who are not parties to the scheme for the reorganization of the said corporation defendant, and to obtain such relief in the premises as may be just and equitable, and for such other or

further order in the premises as to the court may seem meet and proper.

Dated, 2d March, 1900.

ALFRED Y. CHICK and  
WM. FLANDERS LEWIN,  
Petitioners.

By GEO. E. CHURCH,  
LEWIS A. GROFF,  
WORKS & LEE,  
Their Solicitors.

**Exhibit "A."**

To Petition for Cause to Intervene.

**PROPOSED PLAN OF REORGANIZATION.**

**SAN JOAQUIN ELECTRIC COMPANY.**

It is proposed to organize a new corporation capitalized as follows:

First.—Capital stock authorized and issued, \$750,000.

First mortgage prior lien, 5 per cent 40-year gold bonds.

Authorized issue, \$300,000.

Actual immediate issue, \$175,000.

Consolidated mortgage, 4 per cent 40-year gold bonds.

Authorized issue, \$300,000.

Actual immediate issue, \$257,000.

Second.—Of the new securities, the present holders of bonds shall receive for each \$1,000 bonds deposited.

New consolidated mortgage, 4 per cent bonds. \$600.

Four shares fully paid capital stock. \$400.

Third.—Underwriters will be asked to subscribe at 90 for \$175,000 prior lien bonds, required for new capital requirements and expenses of reorganization.



For each \$900 subscribers will receive 5 per cent prior lien bonds, \$1,000.

Twenty shares fully paid capital stock, \$2,000.

Fourth.—One hundred thousand dollars of the capital stock will be issued to certain parties in Fresno, for the water rights transferred by them to the old company, providing they facilitate the foreclosure of the mortgage.

Fifth.—Depositing bondholders to have the right to subscribe for new prior lien bonds in proportion to their present holding.

Sixth.—All of the stock subscribed for the underwriters shall be deposited with the American Securities Agency, Limited, so that the control of the company may be permanently in the hands of the representatives of the bondholders.

Seventh.—Inasmuch as the expenses of reorganization will be provided for by the issue of prior lien bonds, no further assessment beyond the ½ per cent already paid will be made.

Kingdom of Great Britain, }  
and Ireland, } ss.  
City of London, England. }

Alfred Young Chick, being first duly sworn, on his oath says that he is one of the above-named petitioners in the above and foregoing petition for leave to intervene. That said petitioners are residents of the city of London. That he has read the said petition and knows

the contents thereof and that the allegations therein contained are true.

A. Y. CHICK.

Subscribed and sworn to before me this 2d day of March, 1900.

RICHARD WESTCUTT,

Vice and Deputy Consul-General of the United States of America at London, England.

To the Complainant and Defendant, Their and Each of Their Counsel and Solicitors:

You and each of you will please take notice that on Monday, the 9th day of April, 1900, at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, and at the courtroom of said Court, at the southeast corner of Main and Winston streets in the city of Los Angeles, State of California, we will present the foregoing petition to the Circuit Court of the United States in and for the Ninth Circuit, Southern District of California, and apply for an order granting the prayer of said petition and allowing the said petitioners Alfred Young Chick, and William Flanders Lewin, to intervene in said cause as prayed for in said petition, and for such other and further order as may be meet and proper in the premises.

Dated March 30, 1900.

GEORGE E. CHURCH,  
LEWIS A. GROFF,  
WORKS & LEE,

Solicitors for Alfred Young Chick and William Flanders Lewin, Petitioners.

[Endorsed]: Original No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Co., as Trustee, vs. San Joaquin Electric Company. Petition for Leave to Intervene. Received copy of the within March 30, 1900, Chas. Monroe, Solicitor for Complainant. Filed April 2, 1900, Wm. M. Van Dyke, Clerk. Geo. E. Church, L. A. Groff, and Works & Lee, Rooms 420 to 425, Henne Building, Los Angeles, Cal., Solicitors for \_\_\_\_\_.

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*In the Circuit Court of the United States, for the Southern District of California.*

THE MERCANTILE TRUST COM- PANY, Trustee,	Complainant,
vs.	
SAN JOAQUIN ELECTRIC COM- PANY,	Defendant.

**Answer of The Mercantile Trust Company to Petition and Bill in Intervention of Chick et al.**

The answer of The Mercantile Trust Company, complainant herein, to the petition in intervention and bill in intervention of Alfred Young Chick and William Flanders Lewin:

This complainant saving and reserving unto itself all and all manner of benefit or advantage which may be had or taken by reason of the many errors and insuffi-

ciencies in said petition and bill of intervention contained, for answer thereunto and to such parts thereof as this complainant is advised it is material for it to make answer unto, answering says:

This complainant is not informed save by said petition and bill, and therefore can neither admit nor deny whether the petitioners are a partnership existing and doing business as in paragraph I of said petition and bill alleged, or whether they are citizens and residents of the city of London, England, and leave the petitioners to make such proof thereof as they may be advised.

This complainant admits that the defendant San Joaquin Electric Company is a corporation of the State of California, having its principal office and place of business at Fresno, and is a citizen, resident, and inhabitant of the State of California, and of the Southern District thereof; that the complainant is a corporation of the State of New York, having its office and place of business in the city of New York, and is a citizen and resident of said city and State, and that John J. Seymour, receiver, is a citizen and resident of Fresno, California, in the Southern District of said State.

This complainant is not informed save by said petition and bill, whether or not the petitioners are the owners of seventy-eight or any other number of bonds of the defendant Electric Company secured by the mortgage sought to be foreclosed herein, and requires that the petitioners make strict proof in regard thereto.

This complainant admits that on the first day of January, 1899, and the first day of July, 1899, semi-an-

nual installments of interest upon all of the bonds secured by said mortgage or deed of trust sought to be foreclosed herein became due and payable, but this complainant denies upon information and belief that the defendant San Joaquin Electric Company possessed sufficient means or resources to pay said semi-annual installments of interest, or that said installments of interest would have been paid.

Answering the fourth clause or subdivision of said petition and bill, this defendant denies that it entered into any arrangement or conspiracy as alleged in said fourth clause or subdivision of said petition, or that it, its directors or officers had knowledge of any scheme such as is alleged in said petition and bill, or that the purpose of the foreclosure was to bring about the reorganization of defendant company, and not for the collection of the amount due on said bonds, or that said complainant, its officers or directors were to profit therefrom, or that they were to further said scheme or arrangement, and this complainant on information and belief denies each and every other allegation contained in said fourth clause or paragraph of said petition and bill.

This defendant denies each and every allegation contained in the fifth clause or paragraph of said petition and bill.

On information and belief, this complainant denies each and every allegation contained in the sixth clause or subdivision of the said bill and petition.

Without this that any other matter or thing in said petition and bill contained and not herein sufficiently answered, traversed or denied is true to the knowledge or belief of this complainant.

And now this complainant having fully answered said petition and bill prays to be hence dismissed with its costs in this behalf most unjustly incurred.

THE MERCANTILE TRUST COMPANY,  
By ALEXANDER & GREEN, and  
CHAS. MONROE,

Solicitors.

[Endorsed]: No. 916. U. S. Circuit Court, Southern District of California. The Mercantile Trust Company, as Trustee, against San Joaquin Electric Company. Original. Answer of Mercantile Trust Company to Petition and Bill in Intervention of Chick, et al. Filed April 23, 1900, Wm. M. Van Dyke, Clerk.

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At a stated term, to wit, the January Term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Monday, the twenty-third day of April, in the year of our Lord, one thousand nine hundred. Present: The Honorable OLIN WELLBORN, District Judge.

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,	} No. 916.
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.	

**Order Denying Application for Leave to File Answer and Granting Leave to Intervene.**

This cause coming on to be further heard on the petition of Alfred Young Chick and William Flanders Lewin for an order allowing the said petitioners to intervene in said cause as prayed for in said petition, Chas. Monroe, Esq., appearing as counsel for complainant, and John D. Works, Esq., appearing as counsel for petitioners, and complainant by its said counsel having applied to the Court for leave to file the answer of Mercantile Trust Company, to petition and bill in intervention of Chick et al., it is now by the Court ordered that said application for leave to file said answer be, and the same hereby is denied; it is further ordered that the petition of Alfred Young Chick, and William Flanders Lewin for an order allowing the said petitioners to intervene in said cause as prayed for in said petition be, and the same hereby is granted, and the bill of intervention and answer of Alfred Young Chick and William Flanders Lewin is thereupon filed in said cause.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,
vs.	
SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.

**Bill in Intervention and Answer of Alfred Young Chick and  
William Flanders Lewin.**

To the Judges of the United States Circuit Court, Ninth  
Circuit, Southern District of California:

Your intervenors, Alfred Young Chick and William Flanders Lewin, doing business under the firm name and style of A. Y. Chick & Co., citizens and residents of the Kingdom of Great Britain, file this, their bill of intervention herein against the complainant, the Mercantile Trust Company, as trustee, the defendants, San Joaquin Electric Company, John J. Seymour, the receiver appointed by the Court herein, and John S. Eastwood, and its answer to the bill of complaint of the complainant, the Mercantile Trust Company, and respectfully show to the Court:

I.

That your intervenors are citizens and residents of the Kingdom of Great Britain, and were such at the time this action was commenced.



That the complainant, the Mercantile Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and place of business in the City of New York, in said State, and is a citizen and resident of said State.

That the defendant, the San Joaquin Electric Company, is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business at Fresno, in Fresno county, State of California, and said John J. Seymour was, at the time this action was commenced, and still is, a resident and citizen of the State of California and of said district.

Your intervenors further show to your Honors as follows:

They admit that on or about the 1st day of July, 1895, the defendant made, executed, and issued its certain sixteen hundred (1,600) bonds, each for the principal sum of five hundred dollars (\$500.00), and for the principal sum in the aggregate thereof of eight hundred thousand dollars (\$800,000.00), each bearing date the 1st day of July, 1895, wherein and in each of said bonds the said defendant, for value received, promised to pay to the bearer the sum of five hundred dollars (\$500.00), in gold coin of the United States of America, of the then standard of weight and fineness, on the 1st day of July, 1915, at the office of the complainant, in the city of New York, together with interest thereon at the rate of six (6) per cent per annum, payable semi-annually in like

gold coin, on the 1st days of January and July in each year, on presentation and surrender of the interest coupons attached to said bonds, as they severally should become due, said interest also being payable at the office of said complainant.

They admit that in order to secure the payment of the principal and interest of said bonds, the said defendant, on or about the 1st day of July, 1895, made, executed, and delivered to the complainant as trustee a certain mortgage or deed of trust, dated on that day, wherein and whereby it granted, bargained, sold, assigned, set over, released, aliened, conveyed and confirmed unto said complainant and its assigns and successors, in trust, for the purposes in said mortgage set forth, the property described in the third paragraph of the bill of complaint herein, to have and to hold all such property and all other possession, franchises, and claims acquired or to be acquired, and all other premises in said mortgage expressed to be conveyed and assigned unto the use of said complainant and its successors in interest, according to the manner, terms and effect in said mortgage expressed of and concerning the same, for the benefit, protection and security of the persons holding the said bonds, or any of them; that said mortgage or deed of trust was duly recorded in the proper offices in the counties in which the property described therein and thereby conveyed, or intended so to be, was situated, a copy of which mortgage is annexed to and made a part of the bill of complaint herein.

They admit that of the bonds provided to be issued under and secured by said mortgage or deed of trust, or intended so to be, eleven hundred ten (1,110) bonds, numbered from one (1) to eleven hundred ten (1,110), inclusive, for the principal sum in the aggregate of five hundred fifty thousand dollars (\$550,000.00), were duly executed and issued by the said defendant, and were certified by said complainant as trustee under said mortgage or deed of trust, and that the same are now outstanding in the hands of bona fide holders thereof for value.

They admit that in and by the said mortgage or deed of trust it was, among other things, provided that in case the said defendant or its successors should make default in the payment of any interest on any of said bonds, according to the tenor thereof, the payment thereof having been demanded according to the terms thereof, or should make a breach of any of the covenants or agreements in said mortgage contained by it to be done or performed, and such default or breach should continue for the period of six (6) months, that then and thereupon the principal of all of said bonds then outstanding and unpaid might, at the election of the trustee, or at the request of one-tenth (1-10) of the amount of bonds then outstanding and secured thereby, become immediately due and payable.

They admit that in and by said mortgage or deed of trust, it was further provided that if the defendant or its successors should make default in the payment of the principal or any part thereof, or any installment of

interest, or any part thereof, and such default should continue for the space of six (6) months after maturity and demand therefor, it should be the duty of the trustee, upon request and indemnification in said mortgage provided, to proceed in any proper court to foreclose said mortgage, and that the said trustee, the complainant herein, should be entitled to the appointment of a receiver and specific performance of all the covenants therein contained, and said trustee might, in case of default, apply to any court having competent jurisdiction, for instructions as to the matters not therein expressly provided for.

They admit that on or about the 1st day of January, 1899, there fell due a semi-annual installment of interest upon said bonds, represented by the coupons attached thereto, amounting to the sum of sixteen thousand six hundred fifty dollars (\$16,650.00), which amount of interest the defendant refused and neglected to pay; but deny that payment thereof was duly or at all demanded, and that a like default occurred on the 1st day of July, 1899; but your intervenors allege that said default was the result of collusion between the said defendant and its officers in charge of its business and the holders and owners of certain of the bonds of said defendant, and the same owners and holders of bonds who have caused this suit to be instituted, and for the purpose of bringing about an unnecessary reorganization of said company and its affairs, to the detriment of your intervenors and other of the bondholders of said defendant, not parties to said collusion or

scheme of reorganization; and they further aver that the said defendant was fully able to pay the said installments of interest, as they fell due, out of the earnings and funds of said company, and that no proper demand for the payment of said interest was ever made.

They admit that the said default continued for a period of more than six (6) months, but deny that the complainant was requested by the holders of more than a majority of the bonds outstanding and secured by said mortgage or deed of trust, or intended so to be, under the power and authority given to it by said mortgage or deed of trust, to declare or that the complainant elected or declared that the principal of all the bonds then outstanding and unpaid should become immediately due and payable, or that it served notice of such election upon the defendant.

They deny that the defendant, San Joaquin Electric Company, is insolvent, or wholly or at all unable to pay its present or presently accruing indebtedness or liabilities, or the interest on said bonds now due, or that the property covered by the said mortgage or deed of trust, or intended so to be, is slender or insufficient security for the payment of said indebtedness.

They deny that in addition to the amount represented by the said bonds and coupons, the said defendant is indebted to sundry or diverse persons in large sums, which debts, or any of them, have been incurred in the operation of the business of the said defendant, or which debts the said defendant is wholly or at all unable to pay.

They deny that by reason of the insolvency of the said defendant, or for any other reason, it is necessary for the proper protection of the holders of the bonds and coupons secured by the mortgage or deed of trust given to the complainant, as aforesaid, that a receiver or receivers of the property of the said defendant, San Joaquin Electric Company, should be appointed, with the powers given to such receiver or receivers in like cases under the course and practice of this court, or at all.

They admit that the matter in controversy herein exceeds five thousand dollars (\$5,000.00), exclusive of interest and costs.

And your intervenors further allege and show to your Honors that the defendant, John J. Seymour, was by your Honorable Court appointed receiver of the property and business of the said defendant, upon the application of the said complainant, in said cause, and is now acting as such receiver, and as such receiver has possession of the property of the said defendant described and set forth in the bill of complaint of said complainant in said suit, and has the full control and management of the business of said defendant, and the defendant, John S. Eastwood, is now, and was at the times hereinafter mentioned, an officer and engineer of the said defendant company, and is now acting as such engineer under the said receiver.

That your intervenors are now, and have been for a long time, and were before the commencement of this suit, the owners of seventy-eight (78) of the said bonds of the said defendant, San Joaquin Electric Company, being a

part of the same series of bonds described in paragraph II of the complainant's bill of complaint, and secured by the mortgage or deed of trust described in said bill; that on or about the 1st day of January, 1899, there fell due a semi-annual installment of interest on said bonds so held and owned by said intervenors, which said interest is represented by the coupons attached thereto, amounting to the sum of one thousand one hundred seventy dollars (\$1,170.00), which amount of interest the said San Joaquin Electric Company neglected to pay, although possessed of abundant means and resources so to do, and that a like default occurred on the 1st day of July, 1899, and said installment of interest would have been paid, as your intervenors are informed and believe, had not the scheme hereinafter set out been entered into.

That in the month of January, 1899, the said defendant, The San Joaquin Electric Company, had and possessed ample means, income and resources to meet all of its just debts and liabilities due and to become due, including the accrued and accruing interest on all of its said bonds; but instead of applying its said means to the payment of its obligations, including the said interest, its officers and directors, including the said John J. Seymour and John S. Eastwood, conspired together for the purpose of diverting, and did unlawfully and fraudulently divert its funds to other purposes, and purposely and intentionally avoided paying the interest on said bonds, for the fraudulent and unlawful purpose of enabling certain of the bondholders of said company as hereinafter alleged, to bring and maintain a suit to foreclose the mortgage or deed of trust

securing the bonds of said company, and to carry out a scheme entered into by said bondholders and said officers of said company to re-organize the said company, to the detriment and injury of the said company and other of the bondholders thereof, and that the said officers of said company and the said bondholders unlawfully and fraudulently conspired together to induce the complainant, the Mercantile Trust Company, as trustee, and its officers, to foreclose the said mortgage or trust deed by suit against said defendant company, with the object and purpose of carrying out said scheme for the re-organization of said company in the interest of said bondholders and said officers of the defendant company; and in pursuance of said unlawful and fraudulent scheme, the officers of said company, having laid the foundation for the right of said trustee to foreclose said mortgage or deed of trust, or attempted so to do, the said bondholders, for the purpose of bringing about said foreclosure and re-organization, and being sufficient in numbers to authorize them so to do, under the terms of said mortgage or trust deed, requested or caused the said trustee to be requested by their agent or agents to bring suit to foreclose the said mortgage and sell the property of the defendant company described therein, not for the purpose of enforcing the collection of the amount due from said defendant to its bondholders, but for the sole purpose of bringing about such re-organization of said company in the interests of the bondholders requesting such foreclosure, and with the view and for the purpose of destroying the value of the bonds held by these intervenors and others similarly sit-



uated, it being fraudulently agreed between the said bondholders and said John J. Seymour, President of said defendant company, and John S. Eastwood, engineer thereof, that if the said officers of said company would facilitate the foreclosure of said mortgage, the said officers should have and receive one hundred thousand dollars (\$100,000.00) of the stock of the corporation to be organized, as a part of said scheme of re-organization, and said officers in consideration of the said promises of stock of said new corporation to be organized, did facilitate the foreclosure of said mortgage by fraudulently and purposely and unnecessarily allowing the interest upon the said bonds to become and continue delinquent for the term of six (6) months, whereby the right of the said trustee to foreclose the same became and was perfect, according to the terms of the said mortgage or deed of trust; and that it was further agreed and understood as a part of the said scheme of foreclosure and re-organization that the said John J. Seymour, president of said defendant company, should be and he was, in pursuance of said agreement, appointed the receiver in the suit to foreclose said mortgage, as before alleged, upon the request of the said bondholders; and said president and engineer of said defendant corporation are now, and have been, acting in collusion with said bondholders to bring about the foreclosure and sale of the property of said defendant corporation for the benefit of said bondholders, who have inaugurated and are carrying out said scheme of re-organization and for the purpose and with the object of destroying the value of the security held by these intervenors and other bondholders similarly situated.

That the foreclosure proceedings in this action were conceived, commenced, and are being prosecuted in furtherance of said scheme for the re-organization of said defendant corporation; that the said scheme was contrived by and between the said bondholders, at whose suggestion, instigation and request, as alleged in the bill of complaint, this action was begun, and the officers and directors of said defendant corporation; that it was contrived and agreed by and between the parties to this action and said bondholders, at whose instigation the said foreclosure proceedings were begun as aforesaid, that the said defendant company should default in payment of interest on its bonds; that the said trustee, the complainant in said suit, should thereupon elect to declare the entire principal and interest of said bonds immediately due and payable, and thereupon proceed to foreclose said mortgage.

That in pursuance of said conspiracy, the said defendant company failed and refused to pay the interest on its said bonded indebtedness as it became due, though possessed of abundant means and resources so to do, and permitted and connived at, and still permits and connives at said proceedings; that the said scheme and proposed plan of re-organization of the defendant company was as follows:

#### PROPOSED PLAN OF RE-ORGANIZATION.

##### SAN JOAQUIN ELECTRIC COMPANY.

It is proposed to organize a new corporation capitalized as follows:

First.—Capital stock authorized and issued, \$750,000.

First mortgage prior lien 5 per cent 40-year gold bonds.

Authorized issue, \$300,000.

Actual immediate issue, \$175,000.

Consolidated mortgage, 4 per cent 40-year gold bonds.

Authorized issue, \$300,000.

Actual immediate issue, \$257,000.

Second.—Of the new securities, the present holders of bonds shall receive for each \$1,000 bonds deposited.

New consolidated mortgage 4 per cent bonds, \$600.

Four shares fully paid capital stock, \$400.

Third.—Underwriters will be asked to subscribe at 90 for \$175,000 prior lien bonds, required for new capital requirements and expenses of re-organization.

For each \$900 subscribers will receive 5 per cent prior lien bonds, \$1,000.

Twenty shares fully paid capital stock, \$2,000.

Fourth.—One hundred thousand dollars of the capital stock will be issued to certain parties in Fresno, for the water rights transferred by them to the old company, providing they facilitate the foreclosure of the mortgage.

Fifth.—Depositing bondholders to have the right to subscribe for new prior lien bonds in proportion to their present holding.

Sixth.—All of the stock subscribed for by underwriters shall be deposited with the American Securities Agency, Limited, so that the control of the company may be permanently in the hands of the representatives of the bondholders.

Seventh.—Inasmuch as the expenses of reorganization will be provided for by the issue of prior lien bonds, no further assessment beyond the one-half per cent already paid will be made."

And your intervenors further allege and show that the "certain parties in Fresno" referred to in said "proposed plan of re-organization" were the said John J. Seymour, the president, and John S. Eastwood, the engineer of said defendant corporation, and that the said John J. Seymour is the receiver appointed by the Court in this action.

That the complainant, The Mercantile Trust Company, had full notice and knowledge, at the time it brought the said suit to foreclose said mortgage or trust deed, that the purpose of such foreclosure was to bring about the re-organization of the said defendant company, and not for the enforcement or the collection of the amount due upon said bonds. That the said plan for the re-organization of said defendant corporation was conceived and inaugurated and the plan thereof determined upon, before default had been made in the payment of interest upon said bonds, or any of them, and that if said plan and scheme of re-organization had not been determined upon, no suit would have been requested to be brought by said bondholders, or would have been necessary, or would have been brought by said Mercantile Trust Company as trustee, to foreclose the said mortgage or trust deed, nor would the said officers of said corporation defendant have allowed the interest upon said bonds to become delinquent, or to remain unpaid for such time as to entitle the said trustee or said bondholders to elect to declare the principal and interest of said bonds to be due and payable.

That the said defendant, San Joaquin Electric Company, is, and was at the time said default in the payment of interest occurred, solvent, and possessed of ample proper-

ty, income and resources to meet all of its just debts and liabilities, including the interest on said bonds, and said interest might have been, and would have been paid out of the ordinary revenues and receipts of said company, but for the fraudulent conspiracy above set forth, and the purpose and intention of the officers of said defendant company, and said bondholders to bring about the foreclosure of said mortgage and the re-organization of said company for the benefit of said bondholders, and to the detriment of other bondholders not entering into said scheme.

That for the reasons above stated, the bringing of this suit was wholly unnecessary, has involved the bondholders of said company in unnecessary costs and expenses, has reduced the value of the security of the said bondholders, and has been otherwise detrimental to the interests of your intervenors and other of the bondholders of said company.

Wherefore, your intervenors pray your Honors that the bill of complaint herein be dismissed; that the receiver, John J. Seymour, appointed by your Honors, be discharged; that he be ordered and directed to immediately account to this Court for his management of the property of the defendant company, and pay over all funds received by him as such receiver, that said John J. Seymour, as the President of said defendant company, be required to apply the receipts and revenue of said defendant to the payment of the interest accrued upon the bonds described and set forth in the bill of complaint herein; that the said John J. Seymour and John S. Eastwood and said defend-

ant company be perpetually enjoined from carrying out the scheme of re-organization set forth, or any re-organization of the said company, and for such other relief in the premises as may to your Honors seem just and equitable.

ALFRED Y. CHICK,  
WM. FLANDERS LEWIN,  
Intervenors.

By GEO. E. CHURCH,  
LEWIS A. GROFF,  
WORKS & LEE,  
Their Solicitors.

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Company, as Trustee, vs. San Joaquin Electric Company. Bill of Intervention and Answer of A. Y. Chick and W. F. Lewin. Received copy of the within April 20, 1900. Alexander & Green and Chas. Monroe, Solicitors for Mercantile Trust Co. I. L. Cory, Solicitor for other Defendants, to Bill in Intervention. Filed April 23, 1900. Wm. M. Van Dyke, Clerk. G. E. Church, L. A. Groff and Works & Lee, Rooms 420 to 425, Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant.
vs.	
THE SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.

**Notice of Motion to Strike.**

To Works & Lee, Geo. E. Church and Lewis A. Groff, So-  
licitors for Intervenors, Alfred Young Chick and  
William Flanders Lewin, Intervenors:

You and each of you, are hereby notified that the com-  
plainant will on Monday, the 7th day of May, 1900, at  
10:30 o'clock A. M., of said day, or as soon thereafter as  
counsel can be heard, at the courtroom of this Court  
in the Federal Building in the city of Los Angeles, county  
of Los Angeles, State of California, move the Court to  
strike out from the paper filed by said intervenors so  
much thereof as purports to be, or is set up therein, as an  
answer to the original bill herein, for the reasons that no  
leave has been given by the Court to file any answer in  
the cause and because so much of said paper as purports  
to be an answer to the original bill was filed without au-  
thority.

You are hereby further notified that said motion will be made upon the papers and files of the Court herein.

Dated May 3d, 1900.

ALEXANDER & GREEN,  
CHAS. MONROE,  
Solicitors for Complainant.

[Endorsed]: Original. No. 916. Circuit Court of the United States, Ninth Circuit, Southern District of California. The Mercantile Trust Company, as Trustee, Complainant, vs. The San Joaquin Electric Company, Defendant. Notice. Received copy of the within this 3d day of May, 1900. Works & Lee, Attorneys for Interveners, Chick & Lewin. Filed May 3, 1900. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. Chas. Monroe, Attorney at Law, Tel. Main 706, Los Angeles, Cal., 415-416 Douglas Building, Attorneys for Complainant.



At a stated term, to wit, the January term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Monday, the twenty-first day of May, in the year of our Lord one thousand nine hundred. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,	} No. 916.
vs.		
THE SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.	

**Order Striking Out Parts of Bill in Intervention and Answer  
of A. Y. Chick et al.**

This cause coming on this day to be heard on the motion of complainant to strike out from the paper filed by the intervenors entitled "Bill in intervention and answer of A. Y. Chick and W. F. Lewin," so much thereof as purports to be or is set up therein, as an answer to the original bill herein, Chas. Monroe, Esq., appearing as counsel for complainant, and no counsel appearing in opposition thereto, now, on motion of said Chas. Monroe, Esq., of counsel for complainant, it is ordered that the words "and answer" in line 8, and the words "and its answer to the bill of complaint of the complainant, The Mercantile Trust Company," in lines 22 and 23 of page 1 of said paper, and the words "& answer," endorsed on said paper be, and the same hereby is struck out.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	Complainant,	} No. 916.
vs.		
THE SAN JOAQUIN ELECTRIC COMPANY,	Defendant.	

**Notice of Motion to Strike.**

To Works & Lee, Geo. E. Church and Lewis A. Groff,  
Solicitors for Intervenors, Alfred Young Chick and  
William Flanders Lewin, Intervenors:

You and each of you are hereby notified that the complainant will on Monday, the 28th day of May, 1900, at 10:30 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of this Court in the Federal Building in the city of Los Angeles, County of Los Angeles, State of California, move the Court to strike out from the paper filed by said intervenors as a bill in intervention so much thereof as purports to be or is set up therein as an answer to the original bill herein, and particularly to strike out from and including line nine page two to and including the last line at bottom of page five, for the reason that no

leave has been given by the Court to file any answer in the cause and because so much of said paper as purports to be an answer to the original bill was filed without authority, and for the further reason that it is irregular and improper for an answer and bill to be contained in the same paper, and because the paper filed asks for affirmative relief and the intervenors have no right to ask for affirmative relief in an answer.

You are hereby further notified that said motion will be made upon the papers and files of the Court herein.

Dated May 24th, 1900.

ALEXANDER & GREEN,  
CHAS. MONROE,  
Solicitors for Complainant.

[Endorsed]: Original. No. 916. Circuit Court of the United States, Ninth Circuit, Southern District of California. The Mercantile Trust Company, as Trustee, Complainant, vs. The San Joaquin Electric Company, Defendant. Notice of Motion. Received copy of the within this 24th day of May, 1900, Works & Lee, Attorneys for Intervenors. Filed May 24, 1900. Wm. M. Van Dyke, Clerk. Chas. Monroe, Attorney at Law, Tel. Main 706, Los Angeles, Cal., 415-416 Douglas Building, Attorney for Complainant.

*In the Circuit Court of the United States, for the Southern  
District of California, in the Ninth Circuit.*

IN EQUITY.

THE MERCANTILE TRUST COM- PANY, as Trustee,	Complainant,	} No. 916.
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	Defendant.	

Answer of The Mercantile Trust Company to Bill in Inter-  
vention of A. Y. Chick et al.

The answer of The Mercantile Trust Company, the complainant above named, to the bill of intervention filed herein on behalf of Alfred Young Chick and William Flanders Lewin.

This complainant saving and reserving unto itself all and all manner of benefit and *advantage may* be had or taken in the way of exception or otherwise to the many errors and insufficiencies in said bill of intervention contained, for answer thereto, or such parts thereof as this complainant is advised it is material or necessary for it to make answer unto, answering says:

This complainant is not informed save by said bill of intervention whether or not the intervenors therein named are citizens and residents of the Kingdom of Great Britain, and can therefore neither admit nor deny the same.

Complainant admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business in the city of New York, and is a citizen and resident of said State, and that the defendant San Joaquin Electric Company, is a corporation of California, having its principal office and place of business at Fresno, in said State, and that John J. Seymour was at the time of the commencement of the above-entitled action and still is a citizen and resident of the State of California and of the Southern District thereof.

This complainant denies that the default which occurred on the first days of January and July, 1899, in the payment of the semi-annual installment of interest upon the bonds secured by the mortgage or deed of trust sought to be foreclosed in this action, was the result of collusion between the said defendant and its officers in charge of its business and the holders and owners of certain or any of the bonds of said defendant as alleged in said bill of intervention, and this complainant is informed and believes that the allegation contained in said bill of intervention that said default was brought about and this action was instituted for the purpose of bringing about an unnecessary re-organization of the company defendant to the detriment of the intervenors in said bill or of other bond holders of said defendant Electric Company not parties to said alleged collusion or scheme of reorganization is untrue, and it therefore denies said allegation. And this complainant further denies, upon its information and belief, that the said defendant was at the time said install-

ments of interest fell due able to pay the same out of the earnings or funds of said company. And this complainant re-asserts and re-alleges all of the allegations made by it in its bill of complaint heretofore filed herein.

This complainant admits that John J. Seymour was by this court appointed receiver of the property of said defendant covered by the mortgage or deed of trust sought to be foreclosed herein upon the application of this complainant, and as complainant is informed and believes is now acting as such receiver, and as such receiver is in possession of the property of the defendant Electric Company described and set forth in the bill of complaint in this suit.

This complainant also admits that John S. Eastwood is now employed by said Seymour as receiver, but in what capacity he is so employed, or to what extent his services have been required by the receiver, this complainant is not advised and leaves the intervenors to make such proof as they may be advised is necessary or proper.

This complainant is not advised save by said bill of intervention and therefore can neither admit nor deny that the intervenors are the holders of seventy-eight or of any number of the bonds of the defendant, Electric Company, or as to the amount of interest which fell due upon said bonds or any bonds held or claimed to be held by said intervenors, but this complainant admits that the defendant Electric Company made default in the payment of interest upon all of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein as hereinbefore alleged, upon the first days of January and July, 1899.

This complainant denies, upon its information and belief, that in the month of January, 1899, the defendant Electric Company had and possessed ample and sufficient means, income and resources to meet all of its just debts and liabilities due and to become due, including the accrued and accruing interest on all of its bonds, and upon information and belief, further denies that the officers and directors, including the said Seymour and said Eastwood, conspired together for the purpose of diverting, and did unlawfully and fraudulently divert its funds to other purposes, or purposely or intentionally avoided paying the interest upon said bonds, for the purpose of enabling certain bondholders of said company to bring and maintain a suit to foreclose the mortgage or deed of trust, and to carry out a scheme of reorganization as alleged in said bill of intervention, or any other scheme of like character to the detriment and injury of the company and other of the bondholders thereof, and upon its information and belief, denies that the officers of said company and said bondholders unlawfully and fraudulently conspired together to induce the complainant and its officers to foreclose said mortgage or deed of trust, with the object and purpose of carrying out any scheme for the reorganization of the said defendant Electric Company in the interest of said bondholders and said officers of said defendant Electric Company.

This complainant admits that it was requested to bring suit to foreclose the mortgage or deed of trust as alleged in the bill of complaint herein, but denies that such suit was brought or, as far as complainant is informed and

verily believes, such action was requested in pursuance of any unlawful and fraudulent scheme looking toward the injury of any interests of any of the holders of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein, or to the preference of any one holder over any of the other holders of said bonds, nor for the purpose of destroying the value of the bonds held by the intervenors and others similarly situated, if any. And this complainant denies that it has any knowledge or information as to any fraudulent agreement between said bondholders and said Seymour and Eastwood, if any such existed, to the effect that said Seymour and Eastwood should have and receive \$100,000 in the stock of the corporation to be organized, as a part of the scheme of reorganization, or any part thereof, or that said officers in consideration of the said promises did facilitate the foreclosure of the said mortgage by fraudulently and purposely and unnecessarily allowing the interest upon said bonds to become and continue delinquent for the term of six months. This complainant admits that the said John J. Seymour was, upon the request of this complainant, appointed receiver of the mortgaged property in the above-entitled suit, but denies that such request was made by this complainant for the purpose and with the object of destroying or in any way impairing the security held by the intervenors or other bondholders similarly situated, if any, or for any other purpose than the proper protection of the interests of the holders of all the bonds secured by the mortgage or deed of trust sought to be foreclosed herein and for the preservation of the property



covered thereby; and on information and belief, denies that the request of the bondholders to this complainant as trustee to suggest the name of said Seymour as receiver was so made to this complainant for the purpose and with the object of destroying the value of the security held by the intervenors or other bondholders similarly situated if any, or the value of the security of the holders of any of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein.

This complainant denies that the foreclosure proceedings in this action were conceived, commenced and are being prosecuted in furtherance of any scheme for the reorganization of said defendant Electric Company; but to the contrary thereof, this complainant alleges that said proceedings were commenced and are being prosecuted in the interest and for the protection of the property and security of the holders of all of the bonds secured by the said mortgage or deed of trust. And this complainant denies that it was contrived and agreed to by and between the parties to this action and the said bondholders at whose request the foreclosure proceedings were begun that the said defendant Electric Company should default in the payment of interest upon its bonds. And this complainant alleges that said default in the payment of said interest had occurred prior to the time when any request for foreclosure or other action on the part of the complainant as trustee had been made upon it by any of the holders of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein. And this complainant expressly denies that the declaration that the

entire amount of principal and interest should immediately become due and payable and the institution of said foreclosure suit were made through any contrivance or agreement by and between this complainant and the defendant company and any of the holders of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein, but alleges that such action was solely based upon the fact that a default in the payment of interest and a breach of the covenants contained in said mortgage or deed of trust had actually been made and had occurred prior to such declaration and action by said complainant as trustee, and upon the inability and refusal of the defendant company to pay said interest.

And complainant denies that in pursuance of said or any like conspiracy the said defendant company failed and refused to pay the interest upon its bonded indebtedness when it became due, and expressly denies upon information and belief, that said company was possessed of abundant means and resources so to do; but to the contrary thereof, this complainant upon information and belief alleges that at the time of said defaults the said company was wholly unable to pay the interest accruing upon said several dates.

This complainant is not informed save by said bill of intervention and therefore can neither admit nor deny whether any plan of reorganization of the defendant Electric Company has been proposed, or whether the alleged plan of reorganization as set forth in said bill of intervention is a correct copy of a proposed plan of reorganization of said defendant company, and requires the said

intervenor to make strict proof of the allegations in that respect in said bill of intervention contained.

This complainant is not informed save by said bill of intervention and can therefore neither admit nor deny whether "certain parties in Fresno" referred to in the proposed plan of reorganization in said bill set forth, were said Seymour and Eastwood, and leaves intervenors to make such proof of such allegation as they may be advised is material or necessary.

This complainant absolutely denies that it had full or any knowledge or notice at the time the above suit to foreclose was commenced that the purpose of such foreclosure was to bring about the reorganization of said defendant Electric Company and not for the enforcement of the collection of the amount due upon said bonds; and this complainant alleges to the contrary thereof that its sole object and purpose in instituting and prosecuting the said suit for the foreclosure of said mortgage or deed of trust was for the enforcement of the collection of the amount due upon said bonds and coupons and for the protection of the interests of the holders of all the bonds issued under and secured by said mortgage or deed of trust.

This complainant is not informed save by said bill of intervention and can therefore neither admit nor deny the allegations therein contained that the plan of reorganization, if any, of said defendant Electric Company, was conceived and inaugurated, and determined upon, before default was made in the payment of interest upon said bonds or any of them, and that if the alleged plan

and scheme of reorganization had not been determined upon no such suit would have been brought by said bondholders or would have been brought by said complainant as trustee to foreclose said mortgage, and requires that the intervenors make strict proof of such allegation.

This complainant denies, upon information and belief, the allegation that the officers of the defendant Electric Company have allowed the interest upon the bonds to become delinquent or to remain unpaid for such time as to entitle the complainant as trustee or said bondholders to elect to declare the principal and interest of the bonds to be due and payable.

Upon information and belief, this complainant denies the allegations in said bill of intervention contained that the defendant Electric Company is, and was at the time when the default occurred solvent and possessed of ample property, income and resources to pay its just debts and liabilities, including the interest on said bonds, or that such interest might have been or would have been paid out of the ordinary revenues and receipts of said company but for the conspiracy alleged in said bill of intervention, and alleged purpose and intention of the officers of the defendant company and the bondholders to bring about a foreclosure of the mortgage and a reorganization of the said defendant Electric Company for the benefit of said bondholders and to the detriment of any bondholders not entering into the alleged scheme of reorganization; but re-asserts and re-alleges upon information and belief as hereinbefore alleged, that at the time of said defaults the said defendant company was and still is wholly unable

to pay out of its income and resources the interest falling due upon the several dates upon which said defaults occurred.

And this complainant, upon information and belief, denies that the bringing of this suit was wholly unnecessary or that it has involved the bondholders of said defendant Electric Company in unnecessary costs and expenses, or has reduced the value of the security of the said bondholders, or has been in anywise detrimental to the interests of the intervenors or of any other persons as holders of the bonds secured by said mortgage or deed of trust; but to the contrary thereof, this complainant alleges that said suit was brought by this complainant as trustee in good faith and for the necessary and proper protection of the interests of the holders of the said bonds, and so far as this complainant is informed and verily believes, that the request made to this complainant to institute said suit was made by the holders of the bonds making the same in good faith; and for no other purpose than for the protection of the interests of the holders of all the bonds secured by said mortgage or deed of trust, or intended so to be.

Without this that any other matter or thing in said bill of intervention contained and not herein sufficiently admitted, answered, traversed or denied, is true to the knowledge of complainant; and now having fully answered, this complainant prays that the said bill of intervention may be dismissed, and that said complainant may have and recover of said intervenors its costs in this

behalf most wrongfully incurred, and for such other and further relief as to the court may seem meet.

THE MERCANTILE TRUST COMPANY,

H. C. DEMING,

T. P. L.

ALEXANDER & GREEN, and

CHAS. MONROE,

Solicitors for Complainant.

United States of America, }  
Southern District of New York. } ss.

Henry C. Deming, being duly sworn, says, that he is an officer, to wit, the vice-president of The Mercantile Trust Company, the complainant named in the foregoing answer; that he has read the said answer and knows the contents thereof; that the allegations therein contained so far as they relate to his own acts are true, and, so far as they relate to the acts of others, he believes them to be true.

H. C. DEMING.

Sworn to before me this 29th day of May, 1900.

[Seal]

ISAAC MICHAELS,

Notary Public, New York County, N. Y. No. 65.

[Endorsed]: No. 916. In the U. S. Circuit Court, Southern District of California, Ninth Circuit. In Equity. The Mercantile Trust Company, as Trustee, against San Joaquin Electric Company. Answer of Complainant to Bill of Intervention, filed on behalf of Alfred Young Chick

and William Flanders Lewin. Received copy of within this 6th day of June, 1900. Geo. Church, L. A. Groff. Filed June 6, 1900. Wm. M. Van Dyke, Clerk. Alexander & Green, Solicitors for Complainant. Works & Lee, Solicitors for Intervenors.

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*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,	} No. 916.
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.	

**Answer of San Joaquin Electric Company to Bill of Com-  
plaint of Mercantile Trust Company.**

The answer of the San Joaquin Electric Company, the defendant above named, to the bill of complaint filed herein on behalf of The Mercantile Trust Company, complainant:

This defendant saving and reserving unto itself all and all manner of benefit and advantages which may be had or taken in the way of exception, or otherwise, to the many errors and insufficiencies in said bill of complaint contained, for answer thereto, or such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

This defendant admits all the allegations contained in paragraphs 1, 2, 3, 4, 5, and 6 are true and correct.

That on the first day of January, 1899, there fell due a semi-annual installment of interest upon said bonds represented by the coupons attached thereto, amounting to the sum of \$16,650. That this defendant had no funds or means with which to pay said installment of interest, and therefore was compelled to refuse, and did refuse, and neglect to pay the same, and that a like condition existed on the first day of July, 1899. That the only reason why this defendant neglected and refused to pay said respective installments of interest was because of lack of funds, and its inability to raise sufficient money wherewith to pay the same.

Said defendant admits that it was at the time of the commencement of this action, insolvent and unable to pay its present or presently accruing indebtedness and liabilities as well as the principal and interest of said bonds and that it did not have at the time said installment of interest became due, or at the time of the commencement of this action, sufficient money with which to pay said installment as well as its ordinary and current running expenses and claims and demands upon it other than those represented by its said bonded indebtedness.

Wherefore defendant prays that the Court enter such order and decree in the premises as may seem to it fit and proper under the circumstances as presented by the bill and this answer.

BICKNELL, GIBSON & TRASK,  
Attorneys for said Defendant.



State of California, }  
County of Fresno. } ss.

J. M. Collier, being first duly sworn, deposes and says, That he is an officer, to wit, secretary of the defendant corporation above named, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters that he believes it to be true.

J. M. COLLIER.

Subscribed and sworn to before me this 12th day of June, 1900.

[Seal]

A. HARVEY,

Notary Public in and for the County of Fresno, State of California.

[Endorsed]: Orig. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Co., as Trustee, Complainant, vs. San Joaquin Electric Co., Defendant. Answer to Bill of Complaint. Received copy of the within answer this 13th day of June, 1900, Chas. Monroe. By D. H. McDonald. Filed June 13, 1900. Wm. M. Van Dyke, Clerk. Bicknell, Gibson & Trask, Los Angeles, Cal., Solicitors for Defendant.

*In the Circuit Court of the United States, for the Southern  
District of California, in the Ninth Circuit.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,	} No. 916.
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	} Defendant.	

**Answer of San Joaquin Electric Company to Bill in Inter-  
vention of A. Y. Chick et al.**

The answer of the defendant, San Joaquin Electric Company, to the bill of intervention filed herein on behalf of Alfred Young Chick and William Flanders Lewin.

This defendant, saving and reserving unto itself all and all manner of benefit and advantage which may be had or taken in the way of exception or otherwise to the many errors and insufficiencies in said bill of intervention contained, for answer thereto, or such part thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

This defendant is not informed save by said bill of intervention whether or not the intervenors therein named are citizens and residents of the Kingdom of Great Britain, and can therefore neither admit nor deny the same.

Said defendant admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business in the city of New York, and is a citizen and resident of said State, and that the defendant San Joaquin Electric Company, is a corporation of California, having its principal office and place of business at Fresno, in said State, and that John J. Seymour was at the time of the commencement of the above-entitled action and still is a citizen and resident of the State of California, and of the Southern District thereof.

This defendant denies that the default which occurred on the first day of January and July, 1899, in the payment of the semi-annual installment of interest upon the bonds secured by the mortgage or deed of trust sought to be foreclosed in this action, was the result of collusion between this defendant and any of its officers in charge of its business and the holders or owners of certain, or any, of the bonds of said defendant as alleged in said bill of intervention or that said or any default was brought about or this action was instituted for the purpose of bringing about any unnecessary re-organization by the company defendant to the detriment of the intervenors or any one of them in said bill, or of any of the bondholders of said defendant Electric Company not parties to said alleged collusion or scheme of re-organization.

And this defendant further denies that it was at the time said installments of interest fell due, able to pay

the same out of the earnings or funds of said company.

This defendant admits that John J. Seymour was by this Court appointed receiver of the property of this defendant covered by the mortgage or deed of trust sought to be foreclosed herein upon the application of the complainant, and is now acting as such receiver, and as such receiver is in possession of the property of this defendant Electric Company described and set forth in the bill of complaint in this suit.

This defendant also admits that John S. Eastwood is now employed by said Seymour as receiver and does perform such duties as are required of him from time to time by said receiver.

This defendant is not advised, save by said bill of intervention, and therefore can neither admit nor deny that the intervenors are the holders of seventy-eight or of any number of the bonds of this defendant Electric Company, or as to the amount of interest which fell due upon said bonds or any bonds held or claimed to be held by said intervenors, but this defendant admits that it made default in the payment of interest upon all of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein as hereinbefore alleged, upon the first days of January and July, 1899.

This defendant denies that in the month of January, 1899, it had or possessed ample or any means, income, or resources to meet all of its just debts or liabilities, due or to become due, including the accrued or accruing interest on all or any of its said bonds, or that any of its officers or directors, including John J. Seymour and

John S. Eastwood, or either of them, conspired, together for the purpose of diverting or did unlawfully, fraudulently, or otherwise, divert any of its funds to any other purpose or purposely or intentionally avoided paying the interest on said bonds for the fraudulent or any unlawful purpose of enabling any of the bondholders of said company to bring or maintain a suit to foreclose the mortgage or deed of trust securing the bonds of this company or to carry out a scheme entered into by any bondholders and any of the officers of this company to reorganize this company to the detriment or injury of the company or any of the bondholders thereof, or that any of the officers of this company and any of the bondholders unlawfully or fraudulently, or in any manner, conspired together to induce the complainant, the Mercantile Trust Company, as trustee, or any of its officers, to foreclose the said mortgage or trust deed by suit against this company with the object or purpose of carrying out any scheme for the reorganization of said company in the interest of any bondholders and any of the officers of this company; or in pursuance of any unlawful or fraudulent scheme whatever, any of the officers of this company, having laid any foundation whatever, or being sufficient in numbers to authorize them so to do, requested or caused the trustee to be requested by anyone to bring suit to foreclose said mortgage or sell any of the property of the defendant company secured therein, not for the purpose of enforcing the collection of the amount due from the defendant company to its bondholders, but for the sole or any

purpose of bringing about any reorganization of said company in the interest of any of the bondholders or with the view or for the purpose of destroying the value of any of the bonds alleged to be held by these intervenors, or others similarly situated, it being fraudulently, or otherwise, agreed between any bondholders and said John J. Seymour, President of this defendant company, and John S. Eastwood, or either of them, that if said officers of said company would facilitate the foreclosure of said mortgage, the said officers should have or receive \$100,000 of the stock of the corporation to be organized as a part of any scheme of re-organization; that said or any officers in consideration of any promise of stock of any new corporation so to be organized, did facilitate the foreclosure of said mortgage by fraudulently, purposely or intentionally allowing the interest upon the said bonds to become or continue delinquent for any period of time whereby the right of said trustee to foreclose the same became or was perfect in any manner, or that it was agreed or understood as a part of any scheme of foreclosure or reorganization that the said John J. Seymour, president of said company should be, or that he was, in pursuance of any such agreement, appointed receiver in the suit to foreclose said mortgage upon the request of any of said bondholders or that said president and the engineer of this defendant corporation are, or either of them is, now, or have been acting in collusion with any bondholders to bring about the foreclosure or sale of the property of said defendant corporation for the benefit of any bond-

holders or have inaugurated or are carrying out any scheme of reorganization, or for the purpose or with the object of destroying the value of any security held by these intervenors, or other bondholders similarly situated.

And the defendant further denies that the foreclosure proceedings in this action were conceived, commenced or are being prosecuted in furtherance of any alleged scheme for the reorganization of said defendant corporation or that any such scheme was contrived by or between the said bondholders, or that this action was begun at their suggestion, instigation or request in pursuance of any such scheme and any of the officers or directors of said defendant corporation, or that it was contrived or agreed by and between any persons that this defendant company should default in payment of interest upon its bonds or that the said trustee should thereupon elect or declare the entire principal and interest of said bonds immediately due or payable or thereupon proceed to foreclose said mortgage.

This defendant further denies that in pursuance of said, or any, conspiracy, this defendant failed or refused to pay the interest on its said bonded indebtedness as it became due though possessed of any means or resources so to do, or permitted or connived at, or still permits or connives at, said proceeding or that said scheme or proposed plan of reorganization of the company was as set forth by a purported copy in said bill in intervention.

On the contrary, this defendant alleges that neither it, nor any one of its officers, ever had knowledge or notice of any such proposed plan of reorganization until on or about the first day of July, 1899, and after the default in the two semi-annual installments of interest had been made by this defendant company. After this company had been unable to meet and pay its liabilities and the semi-annual installment of interest due January 1st, 1899, there was, as defendant is informed and believes and therefore alleges, a meeting of the respective bondholders to discuss the situation, at which meeting the intervenors were represented, at which said meeting a plan of reorganization was submitted on the lines stated in said purported copy. That this defendant, nor any one of its officers, did not know of said meeting, or of any proposed plan of reorganization until long after the holding of said meeting. That in the month of July, 1899, John J. Seymour, president of the defendant corporation, went to New York at the request of different bondholders, at which said time the proposed plan of reorganization as shown by said purported copy, was submitted to the different bondholders, but said plan was simply a proposal and was never accepted or acted upon, and that it was understood and agreed by the parties who submitted the same that it was not to be accepted or acted upon unless all of the bondholders and the parties interested agreed thereto. That no such agreement having been had, said proposal was never acted upon or followed. That said proposal was submitted solely and only in the interest of all the



different bondholders, so that said company could be reorganized, and to facilitate a reorganization with the least expense and trouble. But defendant alleges upon information and belief that said proposition was not drawn or prepared or submitted to the different bondholders interested in the company until long after the default had been had by this defendant corporation in the payment of its semi-annual installment of interest, and after demand had been made upon the plaintiff herein to institute this action by reason of said default. That said proposal was made in entire good faith, believing the same to be in the best interests of the bondholders and all parties interested, and was subject to any change or modification to be suggested and approved by the parties to whom the proposal was made. And said defendant further alleges upon information and belief that the intervenors herein had full knowledge and notice of the said proposal, and the reasons why the same was made and participated in the meeting of the bondholders, and agreed thereto.

This defendant further denies that The Mercantile Trust Company had any notice or knowledge at the time it brought this action that the purpose of such foreclosure was to bring about any reorganization of said defendant company, or not for the enforcement of the collection of the amount due upon said bonds, or that any plan for the re-organization of said defendant corporation was conceived or inaugurated, or the plan thereof determined upon before default had been made in the payment of interest upon said bonds, or any of

them, or that if said plan or scheme of reorganization had not been determined upon any suit would not have been requested to have been brought by said bondholders, or that the same would not have been necessary or would not have been brought by the said Mercantile Trust Company, or that the officers of said corporation defendant would not have allowed interest upon said bonds to become delinquent or remain unpaid for such time as to entitle the trustee of said bondholders to elect to declare the principal and interest of said bonds to be due or payable.

This defendant denies that it is, or was at the time of said default in the payment of interest occurred, solvent or possessed of any property, income or resources to meet all of its just debts or liabilities, including the interest on said bonds, or that said interest might have been, or would have been, paid out of the ordinary revenues or receipts of said company, but for the fraudulent, or any, conspiracy set forth in said bill of intervention, or the purpose or intention of any of the officers of said defendant company, or any bondholder to bring about the foreclosure of said mortgage or the re-organization of said company for the benefit of any bondholders or to the detriment of any bondholders not entering into said or any scheme.

This defendant further denies that the bringing of this suit was unnecessary or has involved the bondholders of the company in any unnecessary cost or expense, or reduced the value of the security of the bondholders, or has been in any manner detrimental to the interest of the intervenors or any of the bondholders of the company; on

the contrary this defendant alleges that said suit was brought by said complainant, as trustee, in good faith and for the necessary and proper protection of the interests of the holders of the said bonds, and so far as said defendant is informed, and verily believes, that the request made to said complainant to institute said suit was made by the holders of the bonds making the same, in good faith, and for no other purpose than the protection of the interests of the holders of all the bonds secured by said mortgage or deed of trust, or intended so to be.

Without this that any other matter or thing in said bill of intervention contained and not herein sufficiently admitted, answered, traversed or denied, is true to the knowledge of said defendant; and now having fully answered, this defendant prays that the said bill of intervention may be dismissed, and that said defendant may have and recover of said intervenors its costs in this behalf most wrongfully incurred and for such other and further relief as to the court may seem meet.

SAN JOAQUIN ELECTRIC COMPANY,

J. M. COLLIER,

Secretary.

BICKNELL, GIBSON & TRASK,

Solicitors for said Defendant.

United States of America,  
County of Fresno,  
Southern District of California. } ss.

J. M. Collier, being first duly sworn, says that he is an officer, to wit, the secretary of the San Joaquin Electric Company, the defendant named in the foregoing answer; that he has read the said answer and knows the contents thereof; that the allegations therein contained so far as they relate to his own acts are true, and, so far as they relate to the acts of others, he believes them to be true.

J. M. COLLIER,  
Secr.

Subscribed and sworn to before me this 12th day of June, 1900.

[Seal] A. HARVEY,  
Notary Public in and for the County of Fresno, State of California

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Co., as Trustee, Complainant, vs. San Joaquin Electric Co., Defendant. Answer to Bill of Intervention. Received copy of the within answer this 13th day of June, 1900. Works & Lee, Solicitors for Intervenors. Filed June 13, 1900. Wm. M. Van Dyke, Clerk. Bicknell, Gibson & Trask, Los Angeles, Cal., Solicitors for Defendant.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY, as	}
Trustee,	
	}
Complainant,	
vs.	
SAN JOAQUIN ELECTRIC COM-	}
PANY,	
	}
Defendant.	
ALFRED YOUNG CHICK et al.,	}
Intervenors.	

**Replication to Answer of Mercantile Trust Company to  
Bill in Intervention.**

The replication of Alfred Young Chick and William Flanders Lewin, intervenors, to the answer of the complainant, The Mercantile Trust Company, to their bill in intervention herein.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto say that they will aver, maintain and prove their said bill in intervention to be true, certain and sufficient in law to be answered unto, and that the said answers of the said complainant are uncertain, untrue and insufficient to be replied to by these intervenors;

without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, refused or avoided, traversed or denied, are true; all of which matters and things these repliants are and will be ready to aver, maintain and prove as this Honorable Court shall direct, maintain and prove as this Honorable Court shall direct, and humbly pray as and by their said bill in intervention they have already prayed.

GEORGE E. CHURCH,  
L. A. GROFF,  
WORKS & LEE,  
Solicitors for Intervenors.

[Endorsed]: Original. No. 916. U. S. Circuit Court Ninth Circuit, Southern District of California. Mercantile Trust Company, as Trustee, vs. San Joaquin Electric Company. Replication of Intervenors. Received copy of the within June 16, 1900. Chas Monroe. By D. H. McD. Filed June 16, 1900. Wm. M. Van Dyke, Clerk. Geo. E. Church, L. A. Groff and Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY, as  
TRUSTEE,

Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

ALFRED YOUNG CHICK et al.,

Intervenors.

**Replication to Answer of San Joaquin Electric Company to  
Bill in Intervention.**

The replication of Alfred Young Chick and William Flanders Lewin, intervenors, to the answer of the defendant, the San Joaquin Electric Company, to their bill in intervention herein.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto say that they will aver, maintain and prove their said bill in intervention to be true, certain and sufficient in law to be answered unto, and that the said answers of the said defendant are uncertain, untrue and insufficient to be replied to by these intervenors; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, refused or avoided, traversed or denied, are

true; all of which matters and things these repliants are and will be ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as and by their said bill in intervention they have already prayed.

GEORGE E. CHURCH,

L. A. GROFF,

WORKS & LEE,

Solicitors for Intervenors.

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Company, as Trustee, vs. San Joaquin Electric Company. Replication of Intervenors. Received Copy of the within June 16, 1900, Chas. Monroe. By D. H. McD. Filed June 16, 1900. Wm. M. Van Dyke, Clerk. Geo. E. Church, L. A. Groff, and Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, for the Southern District of California, in the Ninth Circuit.*

THE MERCANTILE TRUST COM-  
PANY, as Trustee,

Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant.

No. 916.

**Answer of John J. Seymour and John S. Eastwood to Bill in Intervention.**

The answer of John J. Seymour, the receiver appointed by the Court herein, and John S. Eastwood, to the bill



of intervention filed herein on behalf of Alfred Young Chick and William Flanders Lewin.

These defendants saving and reserving unto themselves all and all manner of benefit and advantage which may be had or taken in the way of exception or otherwise to the many errors and insufficiencies in said bill of intervention contained, for answer thereto, or such part thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

These defendants are not informed save by said bill of intervention whether or not the intervenors therein named are citizens and residents of the Kingdom of Great Britain, and can therefore neither admit nor deny the same.

Defendants admit that the complainant is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business in the city of New York, and is a citizen and resident of said State, and that the defendant, San Joaquin Electric Company, is a corporation of California, having its principal office and place of business at Fresno in said State, and that John J. Seymour was at the time of the commencement of the above-entitled action and still is a citizen and resident of the State of California and of the Southern District thereof.

These defendants deny that the default which occurred on the first day of January, and July, 1899, in the payment of the semi-annual installment of interest upon the bonds secured by the mortgage or deed of trust sought to be foreclosed in this action, was the result of collu-

sion between the said defendant and any of its officers in charge of its business and the holders or owners of certain or any of the bonds of said defendant as alleged in said bill of intervention or that said or any default was brought about or this action was instituted for the purpose of bringing about any unnecessary reorganization by the company defendant to the detriment of the intervenors or any one of them in said bill, or of any of the bondholders of said defendant Electric Company not parties to said alleged collusion or scheme of reorganization.

And these defendants further deny, that the said defendant company was at the time said installment of interest fell due able to pay the same out of the earnings or funds of said company.

These defendants admit that John J. Seymour was by this Court appointed receiver of the property of said defendant covered by the mortgage or deed of trust sought to be foreclosed herein upon the application of the complainant, and is now acting as such receiver, and as such receiver is in possession of the property of the defendant Electric Company described and set forth in the bill of complaint in this suit.

These defendants also admit that John S. Eastwood is now employed by said Seymour as receiver and does perform such duties as are required of him from time to time by said receiver.

These defendants are not, nor is either one of them, advised save by said bill of intervention and therefore can neither admit nor deny that the intervenors are the holders of seventy-eight or of any number of the bonds

of the defendant Electric Company, or as to the amount of interest which fell due upon said bonds or any bonds held or claimed to be held by said intervenors, but these defendants admit that the defendant Electric Company made default in the payment of interest upon all of the bonds secured by the mortgage or deed of trust sought to be foreclosed herein as hereinbefore alleged, upon the first days of January and July, 1899.

Defendants deny that in the month of January, 1899, the defendant, San Joaquin Electric Company had or possessed ample or any means, income, or resources to meet all of its just debts or liabilities, due or to become due, including the accrued or accruing interest on all or any of its said bonds, or that any of its officers or directors, including these defendants, or either of them, conspired together for the purpose of diverting or did unlawfully, fraudulently or otherwise, divert any of its funds to any other purpose, or purposely or intentionally avoid paying the interest on said bonds for the fraudulent or any unlawful purpose of enabling any of the bondholders of said company to bring or maintain a suit to foreclose the mortgage or deed of trust securing the bonds of said company or to carry out a scheme entered into by any bondholders, and any of the officers of said company to reorganize said company to the detriment or injury of the company or any of the bondholders thereof, or that any of the officers of said company and any of the bondholders unlawfully or fraudulently, or in any manner, conspired together to induce the complainant, The Mercantile Trust Company, as trustee, or

any of its officers to foreclose the said mortgage or trust deed by suit against the company, with the object or purpose of carrying out any scheme for the reorganization of said company in the interest of any bondholders and any of the officers of said company, or in pursuance of any unlawful or fraudulent scheme whatever any of the officers of said company, having laid any foundation whatever, or being sufficient in numbers to authorize them so to do, requested or caused the trustee to be requested by anyone to bring suit to foreclose said mortgage or sell any of the property of the defendant company secured therein, not for the purpose of enforcing the collection of the amount due from the defendant company to its bondholders, but for the sole or any purpose of bringing about any reorganization of said company in the interest of any of the bondholders or with the view, or for the purpose of destroying the value of any of the bonds alleged to be held by these intervenors, or others similarly situated, it being fraudulently, or otherwise, agreed between any bondholders and said John J. Seymour, president of said defendant company, and John S. Eastwood, or either of them, that if said officers of said company would facilitate the foreclosure of said mortgage, the said officers should have or receive \$100,000 of the stock of the corporation to be organized as a part of any scheme of reorganization; that said or any officers in consideration of any promise of stock of any new corporation so to be organized, did facilitate the foreclosure of said mortgage by fraudulently, purposely or intentionally allowing the interest

upon the said bonds to become or continue delinquent for any period of time whereby the right of said trustee to foreclose the same, became or was perfect in any manner, or that it was agreed or understood as a part of any scheme of foreclosure or reorganization that the said John J. Seymour, president of said company, should be, or that he was, in pursuance of any such agreement, appointed receiver in the suit to foreclose said mortgage upon the request of any of said bondholders or that said president and the engineer of said defendant corporation are, or either of them is, now or have been acting in collusion with any bondholders to bring about the foreclosure or sale of the property of said defendant corporation for the benefit of any bondholders, and have inaugurated or are carrying out any scheme of reorganization, or for the purpose or with the object of destroying the value of any security held by these intervenors, or other bondholders similarly situated.

And the defendants further deny that the foreclosure proceedings in this action were conceived, commenced or are being prosecuted in furtherance of any alleged scheme for the reorganization of said defendant corporation or that any such scheme was contrived by or between the said bondholders, or that this action was begun at their suggestion, instigation or request in pursuance of any such scheme and any of the officers or directors of said defendant corporation, or that it was contrived or agreed by and between any persons that said defendant company should default in payment of

interest upon its bonds or that the said trustee should thereupon elect or declare the entire principal and interest of said bonds immediately due or payable or thereupon proceed to foreclose said mortgage.

These defendants further deny that in the pursuance of said, or any, conspiracy, the defendant company failed or refused to pay the interest on its said bonded indebtedness as it became due though possessed of any means or resources so to do, or permitted or connived at, or still permits or connives at said proceeding, or that said scheme or proposed plan of reorganization of the company was as set forth by a purported copy in said bill in intervention.

On the contrary, these defendants allege that neither one of them ever had knowledge or notice of any such proposed plan of reorganization until on or about the first day of July, 1899, and after the default in the two semi-annual installments of interest had been made by the defendant company. After said company had been unable to meet and pay its liabilities and the semi-annual installment of interest due January 1st, 1899, there was, as defendants are informed and believe and therefore allege, a meeting of the respective bondholders to discuss the situation, at which meeting the intervenors were represented, at which said meeting a plan of reorganization was submitted on the lines stated in said purported copy. That these defendants did not know of said meeting, or of any proposed plan of reorganization until long after the holding of said meeting. That in the month of July, 1899, the defendant, John J. Sey-

mour, went to New York at the request of different bondholders, at which said time, the proposed plan of reorganization, as shown by said purported copy, was submitted to the different bondholders, but said plan was simply a proposal and was never accepted or acted upon, and that it was understood and agreed by the parties who submitted the same that it was not to be accepted or acted upon unless all of the bondholders and the parties interested agreed thereto. That no such agreement having been had, said proposal was never acted upon or followed. That said proposal was submitted solely and only in the interest of all the different bondholders, so that said company could be reorganized, and to facilitate a reorganization with the least expense and trouble. But defendants allege upon their information and belief that said proposition was not drawn or prepared or submitted to the different bondholders interested in the company until long after the default had been made by the defendant corporation in the payment of its semi-annual installment of interest, and after demand had been made upon the plaintiff herein to institute this action by reason of said default. That said proposal was made in entire good faith, believing the same to be in the best interests of the bondholders and all parties interested, and was subject to any change or modification to be suggested and approved by the parties to whom the proposal was made. And said defendants further allege, upon their information and belief that the intervenors herein had full knowledge and notice of the said proposal and the reasons why the

same was made and participated in the meeting of the bondholders and agreed thereto.

These defendants further deny that the Mercantile Trust Company had any notice or knowledge at the time it brought this action that the purpose of such foreclosure was to bring about any reorganization of said defendant company, or not for the enforcement of the collection of the amount due upon said bonds, or that any plan for the reorganization of said defendant corporation was conceived or inaugurated or the plan thereof determined upon before default had been made in the payment of interest upon said bonds, or any of them, or that if said plan or scheme of reorganization had not been determined upon any suit would not have been requested to have been brought by said bondholders, or that the same would not have been necessary or would not have been brought by the said Mercantile Trust Company, or that the officers of said corporation defendant would not have allowed interest upon said bonds to become delinquent or remain unpaid for such time as to entitle the trustee of said bondholders to elect to declare the principal and interest of said bonds to be due or payable.

The defendants deny that the defendant, the San Joaquin Electric Company is or was at the time of said default in the payment of interest occurred, solvent or possessed of any property, income, or resources to meet all of its just debts or liabilities, including the interest on said bonds, or that said interest might have been, or would have been, paid out of the ordinary revenues



or receipts of said company, but for the fraudulent, or any, conspiracy set forth in said bill of intervention, or the purpose or intention of any of the officers of said defendant company, or any bondholder to bring about the foreclosure of said mortgage or the reorganization of said company for the benefit of any bondholders or to the detriment of any bondholders not entering into said or any scheme.

These defendants further deny that the bringing of this suit was unnecessary or has involved the bondholders of the company in any unnecessary cost or expense, or reduced the value of the security of the bondholders, or has been in any manner detrimental to the interest of the intervenors or any of the bondholders of the company; on the contrary, these defendants allege that said suit was brought by said complainant as trustee in good faith, and for the necessary and proper protection of the interests of the holders of the said bonds, and so far as said defendants are informed and verily believe, that the request made to said complainant to institute said suit was made by the holders of the bonds making the same in good faith, and for no other purpose than for the protection of the interests of the holders of all the bonds secured by said mortgage or deed of trust, or intended so to be.

Without this that any other matter or thing in said bill of intervention contained and not herein sufficiently admitted, answered, traversed or denied, is true to the knowledge of said defendants; and now, having fully

answered said defendants, pray that the said bill of intervention may be dismissed, and that said defendants may have and recover of said intervenors their costs in this behalf most wrongfully incurred, and for such other and further relief as to the Court may seem meet.

JOHN J. SEYMOUR,

JOHN S. EASTWOOD,

L. L. CORY,

Solicitors for Defendants.

United States of America,  
County of Fresno,  
Southern District of California. } ss.

John J. Seymour, being first duly sworn, says that he is one of the defendants named in the foregoing answer; that he has read the said answer and knows the contents thereof; that the allegations therein contained, so far as they relate to his own acts, are true, and, so far as they relate to the acts of others, he believes them to be true.

JOHN J. SEYMOUR.

Subscribed and sworn to before me this 12th day of June, 1900.

[Seal]

A. HARVEY,

Notary Public in and for the County of Fresno, State of California.

[Endorsed]: No. 916. In the Circuit Court, 9th Circuit, State of California. Mercantile Trust Company, Plaintiff, vs. San Joaquin Electric Company et al., De-

endants. Answer of John J. Seymour et al. to Bill of Intervention. Received copy of the within answer is admitted by copy this 18th day of June, 1900. Works & Lee, Attorneys for Intervenors. Filed June 18, 1900. Wm. M. Van Dyke, Clerk. L. L. Cory, First National Bank Building, Fresno, Cal., Attorney for \_\_\_\_\_.

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*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY, as Trustee,	}	Complainant,
vs.		
SAN JOAQUIN ELECTRIC COM- PANY,	}	Defendant,
ALFRED YOUNG CHICK et al., Intervenors.		

**Replication to Answer of John J. Seymour and John S. Eastwood.**

The replication of Alfred Young Chick and William Flanders Lewin, intervenors, to the answer of John J. Seymour, the receiver appointed by the Court herein, and John S. Eastwood, to their bill in intervention herein.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto say that they will aver,

maintain and prove their said bill in intervention to be true, certain and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied to by these intervenors; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, refused or avoided, traversed or denied, are true; all of which matters and things these repliants are and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray as and by their said bill in intervention they have always prayed.

GEORGE E. CHURCH,  
L. A. GROFF,  
WORKS & LEE,  
Solicitors for Intervenors.

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Co., as Trustee, vs. San Joaquin Electric Co. Replication of Intervenors. Received copy of the within June 26, 1900. Chas. Monroe, Attorney for Plaintiff. Filed June 26, 1900. Wm. M. Van Dyke, Clerk. Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

At a stated term, to wit, the July term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Tuesday, the fourth day of September, in the year of our Lord one thousand nine hundred. Present: The Honorable OLIN WELLBORN, District Judge.

MERCANTILE TRUST COMPANY, as	}	No. 916.
Trustee,		
	Complainant,	
vs.		
SAN JOAQUIN ELECTRIC COM-	}	
PANY,		
	Defendant.	

**Order Allowing Motion to Strike Out from Bill in Intervention and Answer.**

This cause having heretofore been submitted to the Court for its consideration and decision on the motion of complainant to strike out from the paper filed by the intervenors herein, as a bill in intervention, so much thereof as purports to be or is set up therein, as an answer to the original bill herein, and particularly to strike out from and including line 9, on page 2, to and including the last line at the bottom of page 5, and the Court having duly considered the same and being fully advised in

the premises, it is now, on this 4th day of September, 1900, being a day in the July Term, A. D. 1900, of said court, ordered that said motion be, and the same hereby is, allowed.

NOTE.

The portion of the bill in intervention struck out by the foregoing order described in said order as "from and including line 9 on page 2, to and including the last line at the bottom of page 5" of said bill in intervention is as follows:

Your intervenors further show to your Honors as follows:

They admit that on or about the 1st day of July, 1895, the defendant made, executed and issued its certain sixteen hundred (1600) bonds, each for the principal sum of five hundred dollars (\$500.00), and for the principal sum in the aggregate thereof of eight hundred thousand dollars (\$800,000.00), each bearing date the 1st day of July, 1895, wherein and in each of said bonds the said defendant, for value received, promised to pay to the bearer the sum of five hundred dollars (\$500.00), in gold coin of the United States of America, of the then standard of weight and fineness, on the 1st day of July, 1915, at the office of the complainant, in the city of New York, together with interest thereon at the rate of six (6) per cent per annum, payable semi-annually, in like gold coin, on the 1st days of January and July in each year, on presentation and surrender of the interest coupons attached to said bonds, as they severally should become due, said interest also being payable at the office of said complainant.

They admit that in order to secure the payment of the principal and interest of said bonds, the said defendant, on or about the 1st day of July, 1895, made, executed and delivered to the complainant, as trustee, a certain mortgage or deed of trust, dated on that day, wherein and whereby it granted, bargained, sold, assigned, set over, released, aliened, conveyed and confirmed unto said complainant and its assigns and successors, in trust, for the purposes in said mortgage set forth, the property described in the third paragraph of the bill of complaint herein, to have and to hold all such property and all other possession, franchises and claims acquired or to be acquired, and all other premises in said mortgage expressed to be conveyed and assigned unto the use of said complainant and its successors in interest, according to the manner, terms and effect in said mortgage expressed of and concerning the same, for the benefit, protection and security of the persons holding the said bonds, or any of them; that said mortgage or deed of trust was duly recorded in the proper offices in the counties in which the property described therein and thereby conveyed, or intended so to be, was situated, a copy of which mortgage is annexed to and made a part of the bill of complaint herein.

They admit that of the bonds provided to be issued under and secured by said mortgage or deed of trust, or intended so to be, eleven hundred ten (1110) bonds, numbered from one (1) to eleven hundred ten (1110), inclusive, for the principal sum in the aggregate of five hundred fifty thousand dollars (\$550,000.00), were duly executed and issued by the said defendant, and were certi-

fied by said complainant as trustee under said mortgage or deed of trust, and that the same are now outstanding in the hands of bona fide holders thereof for value.

They admit that in and by the said mortgage or deed of trust it was, among other things, provided that in case the said defendant or its successors should make default in the payment of any interest on any of said bonds, according to the tenor thereof, the payment thereof having been demanded according to the terms thereof, or should make a breach of any of the covenants or agreements in said mortgage contained by it to be done or performed, and such default or breach should continue for the period of six (6) months, that then and thereupon the principal of all of said bonds then outstanding and unpaid might, at the election of the trustee, or at the request of one-tenth (1-10) of the amount of bonds then outstanding and secured thereby, become immediately due and payable.

They admit that in and by said mortgage or deed of trust, it was further provided that if the defendant or its successors should make default in the payment of the principal or any part thereof, or any installment of interest, or any part thereof, and such default should continue for the space of six (6) months after maturity and demand therefor, it should be the duty of the trustee, upon request and indemnification in said mortgage, provided, to proceed in any proper court to foreclose said mortgage, and that the said trustee, the complainant herein, should be entitled to the appointment of a receiver, and specific performance of all the covenants therein con-



tained, and said trustee might, in case of default, apply to any court having competent jurisdiction, for instructions as to the matters not therein expressly provided for.

They admit that on or about the 1st day of January, 1899, there fell due a semi-annual installment of interest upon said bonds represented by the coupons attached thereto, amounting to the sum of sixteen thousand, six hundred fifty dollars (\$16,650.00), which amount of interest the defendant refused and neglected to pay; but deny that payment thereof was duly or at all demanded, and that a like default occurred on the 1st day of July, 1899; but your intervenors allege that said default was the result of collusion between the said defendant and its officers in charge of its business and the holders and owners of certain of the bonds of said defendant, and the same owners and holders of bonds who have caused this suit to be instituted and for the purpose of bringing about an unnecessary reorganization of said company and its affairs, to the detriment of your intervenors and other of the bondholders of said defendant not parties to said collusion or scheme of reorganization; and they further aver that the said defendant was fully able to pay the said installments of interest, as they fell due, out of the earnings and funds of said company, and that no proper demand for the payment of said interest was ever made.

They admit that the said default continued for a period of more than six (6) months, but deny that the complainant was requested by the holders of more than a majority of the bonds outstanding and secured by said mortgage or deed of trust, or intended so to be, under the power

and authority given to it by said mortgage or deed of trust, to declare, or that the complainant elected or declared that the principal of all the bonds then outstanding and unpaid should become immediately due and payable, or that it served notice of such election upon the defendant.

They deny that the defendant, San Joaquin Electric Company, is insolvent, or wholly or at all unable to pay its present or presently accruing indebtedness or liabilities, or the interest on said bonds now due, or that the property covered by the said mortgage or deed of trust, or intended so to be, is slender or insufficient security for the payment of said indebtedness.

They deny that in addition to the amount represented by the said bonds and coupons, the said defendant is indebted to sundry or divers persons in large sums, which debts, or any of them, have been incurred in the operation of the business of the said defendant, or which debts the said defendant is wholly or at all unable to pay.

They deny that by reason of the insolvency of the said defendant, or for any other reason, it is necessary for the proper protection of the holders of the bonds and coupons secured by the mortgage or deed of trust given to the complainant, as aforesaid, that a receiver or receivers of the property of the said defendant, San Joaquin Electric Company, should be appointed, with the powers given to such receiver or receivers in like cases under the course and practice of this court, or at all.

They admit that the matter in controversy herein exceeds five thousand dollars (\$5,000.00), inclusive of interest and costs.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY,	}
Complainant,	
vs.	}
SAN JOAQUIN ELECTRIC COM-	
PANY,	
Defendant,	
A. Y. CHICK and W. F. LEWIN,	}
Intervenors.	

**Stipulation as to Taking Testimony of Charles H. Coffin.**

It is hereby stipulated that the testimony of Charles H. Coffin may be taken in the above-entitled cause on behalf of the intervenors, A. Y. Chick and W. F. Lewin, at the law office of Ira W. and C. C. Buell, 510 Chicago Title and Trust Building, 100 Washington street, Chicago, Illinois, on the 16th day of October, 1900, before Oliver T. Cody, a notary public in and for the county of Cook, State of Illinois; that said testimony be taken orally, and in shorthand, by a competent stenographer, and that the same be transcribed into longhand in typewriting, and so transcribed, duly certified by such stenographer to be correct; and that as so taken, and transcribed, the testimony be transmitted to the clerk of the United States Circuit

Court in and for the Ninth Circuit, Southern District of California, at Los Angeles, California.

Los Angeles, Cal., September 29, 1900.

ALEXANDER & GREEN,

CHAS. MONROE,

Solicitors for Complainant.

BICKNELL, GIBSON & TRASK,

Solicitors for Defendant.

GEORGE E. CHURCH,

L. A. GROFF,

WORKS & LEE,

Solicitors for Intervenors.

[Endorsed]: Original No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Co., vs. San Joaquin Electric Co. Stipulation. Works & Lee, Rooms 420 to 425, Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY,  
Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

A. Y. CHICK and W. F. LEWIN,

Intervenors.

**Deposition of Charles H. Coffin.**

Deposition of Charles H. Coffin, taken before Oliver T. Cody, a notary public, in and for the county of Cook, in the State of Illinois, on behalf of the intervenors, A. Y. Chick, and W. F. Lewin, in the above-entitled cause on the 16th day of October, A. D. 1900, at the hour of ten o'clock A. M., said deposition being taken in pursuance of the stipulation hereto attached, entered into between counsel for the respective parties in the above-entitled cause, dated September 29, A. D. 1900.

Present: HENRY C. WOOD, Representing the Complainant.

CHARLES C. BUELL, Representing the Intervenors.

CHARLES H. COFFIN, produced as a witness on behalf of the intervenors, having been first duly affirmed, deposes and says as follows:

Direct Examination.

(By Mr. BUELL.)

Q. What is your name? A. Charles H. Coffin.

Q. Where do you reside?

A. 380 Ontario street, Chicago.

Q. What is your business?

A. Broker in investment securities.

Q. Are you familiar with the affairs of the San Joaquin Electric Company, and, if so, for how long a time have you been familiar with their affairs?

A. From its organization down to August, 1899.

Q. Are you a stockholder in the corporation?

A. Yes, sir, I am.

Q. When was the San Joaquin Electric Company organized?

A. I think in 1895—April 2, 1895.

Q. Are you familiar with the affairs of the Fresno Water Company? A. Yes, sir.

Q. During what time have you been familiar with their affairs?

A. From about 1888, down to August, 1899.

Q. Are you acquainted with Mr. Charles F. Street of New York? A. Yes, sir.

Q. How long have you been acquainted with him?

A. Since he was born.

Q. How long is that?

A. I should say about forty years.

(Deposition of Charles H. Coffin.)

Q. What is his business, if you know, and what was his business in the years 1898, 1899, and 1900?

A. He was a banker, and dealer in investment securities, and principally occupied in representing English clients in their reorganization of American companies.

Q. Do you know of the American Securities Agency, Limited, of London, England?           A. Yes, sir.

Q. What connection, if any, has Mr. Street with that agency, if you know?

A. He is their American agent.

Q. What was the condition of the San Joaquin Electric Company on January 1, 1899?

(Objected to by counsel for complainant as incompetent, irrelevant and immaterial.)

(It is stipulated and agreed by and between counsel that all questions which are objected to upon the grounds of incompetency, irrelevancy, and immateriality, and also for other reasons as may be stated, may be answered subject to the objection.)

A. My answer would be that monthly statements were submitted to me of the condition of the company from the time of its organization up to August, 1899.

Q. Did you ever receive any statement or statements of the condition of the San Joaquin Electric Company on January 1, 1899?

A. Yes, sir; I received such a statement some time in the month of January, 1899.

Q. Look at this paper now shown you, and state whether or not that is the statement which was furnished

(Deposition of Charles H. Coffin.)

to you by the officers of the company as to the condition of the company on January 1, 1899?

A. This statement is dated February 14, 1899, and was submitted to me, or was sent to me, a statement of which this is a copy. There was a previous statement early in January. When I got that previous statement I wrote back for this one, which gives the matters in detail.

Q. This is signed by whom?

A. The San Joaquin Electric Company, by John J. Seymour, president, and J. M. Collier, secretary.

Q. They were the president and secretary of the San Joaquin Electric Company at that time, were they?

A. Yes, sir. The statement is attested by the seal of the company.

Mr. BUELL.—We offer that statement in evidence.

(Objected to by counsel for complainant, as incompetent, irrelevant and immaterial.)

Statement offered in evidence marked "Exhibit No. 1," and is in words and figures following, to wit:



(Deposition of Charles H. Coffin.)

**Exhibit No. 1.**

Fresno, California, Feb. 14th, 1899.

**STATEMENTS**

of the

Fresno Water Co., and The San Joaquin Electric Co.  
for the year ending Dec. 31st, 1898.

**FRESNO WATER COMPANY.**

Receipts:

From consumers . . . . .	\$48,352.82		
Service connections ..	135.00		
Sundry collections ...	422.95	\$48,913.77	

Operating Expenses:

Power .. .	\$6,000.00		
Fuel .. . . .	4,836.90	10,836.90	
Salary .. . . . . .	7,637.20		
Expense .. . . . . .	3,054.66		
Taxes .. . . . . .	4,024.99		
Interest .. . . . . .	589.40		
Interest on bonds....	19,500.00	45,643.15	\$ 3,270.62

Resources:

San Joaquin Electric Company . . . . .	\$22,688.22		
Cash in bank.....	1,003.47	\$23,691.69	

Liabilities:

Fresno National Bank	5,883.80		
Crane Company . . . . .	4,908.70		
Union Oil Co.....	880.66		
Westinghouse Electric Company .. . . . . .	1,200.00	12,873.16	10,818.52

(Deposition of Charles H. Coffin.)

## NOTES.

Since January 1st, 1899, \$1,000 on Fresno National Bank note has been paid.

In the liabilities of the company there appears as entry of \$4,908.70 owing to the Crane Company for a power pump. The secretary entered it on the company's books, but as the pump was rejected the entry has since been canceled. A satisfactory substitute has been found at an expense of less than \$1,000.

## SAN JOAQUIN ELECTRIC COMPANY.

## Operating Expense:

Expense, interest and

taxes . . . . .	\$ 8,026.62		
Salary . . . . .	14,787.60		
Carbons . . . . .	1,118.19		
Bond interest . . . . .	31,500.00	\$55,432.41	

## Receipts:

Current collections ..	37,432.28		
Merchandise ... ..	673.62	38,105.90	17,326.51

## Liabilities:

Accounts unpaid . . . . .	4,701.53		
Bills payable . . . . .	16,150.00		
Water Company . . . . .	22,688.22		
General Electric Co..	7,201.27	50,741.02	

Liabilities:

50,741.02

(Deposition of Charles H. Coffin.)

Resources:

Accounts due us.....	6,508.95	
Cash on hand.....	1,188.35	
Bonds on hand.....	30,000.00	37,697.30

---

Bonds held as collateral, by the following named creditors:

General Electric Co., 10 bonds, \$5,000, \$4,500.

W. Liddell, 13 bonds, \$6,500, \$4,500.

First National Bank, 16 bonds \$8,000, \$5,400.

Fresno National Bank, 21 bonds, \$10,500, to secure \$5,883.80 due from the Fresno Water Company.

NOTES.

Since January 1st, 1899, there has been paid on the Liddell note, \$1,000; First National Bank note, \$1,000.

ESTIMATE OF REVENUE

of

The Fresno Water Co. and The San Joaquin Electric Co.  
for the year ending Dec. 31st, 1899.

FRESNO WATER COMPANY.

Collections from all sources for the year 1898. . \$48,914.00

Expenditures:

General expenses .....	\$2,427	
Salaries .....	8,250	
Power and extra fuel.....	7,000	
Taxes .....	3,025	
Interest on bonds .....	19,500	\$40,472.00

---

(Deposition of Charles H. Coffin.)

## NOTES.

The yearly increase of revenue for the past three years has averaged \$2,100. This in the face of a slight reduction of rates each year. As there will be no change of rates for the present year, it is fair to add at least this amount to the gross revenues.

The expenses of the water company were greatly increased by reason of the drought prevailing throughout California, which occasioned a partial shutdown of the San Joaquin Electric Company's plant, on which the water company was dependent for its power supply. The water company was forced to extra and unusual expenditures to keep up its supply. There is no reason to apprehend a recurrence of this mishap, hence the extra expenditures are partially omitted from our estimates for this year.

## SAN JOAQUIN ELECTRIC COMPANY.

The actual monthly earnings from lights and small motors for the month of January, 1899 (taken register collections in February),	
\$3,575.04. For 12 months .....	\$42,900.48
Additional, contracted to begin March 1st, per month, \$45.50. For 10 months.....	455.00
Increased rates of various consumers, to begin March 1, per month, \$139.50. For 10 months	1,395.00
Sperry Flour Company.....	3,600.00
San Joaquin Ice Company.....	5,800.00
Hanford Extension .....	7,200.00
<hr/> Total.....	<hr/> \$61,350.48

(Deposition of Charles H. Coffin.)

Expenditures:

General expenses, taxes, etc.....	\$ 4,981.00	
Salaries .....	14,880.00	
Carbons .....	1,000.00	
Bond interest .....	31,500.00	
Hanford Extension interest ....	3,000.00	
Hanford Extension construction.	4,200.00	\$59,561.00
		\$ 1,789.48

NOTE.

The partial shut-down of the plant, because of the drought, occasioned an almost chaotic condition of the company's affairs. The revenues were almost wholly cut off, while the expenses were increased, by reason of the attempt to make good our contracts to supply power and lights as far as it could possibly be done. For this reason an attempt to base any estimate for this year's business on that of last year would be altogether misleading and unfair to the company.

The custom lost by reason of our inability to supply demands has gradually returned, as the January earnings are about what they were at the beginning of the shut-down. For this reason the January earnings are taken as a basis for the year's business, together with the increase and additional consumers already contracted with.

We confidently expect an increase of earnings over the above showing for the year, for the following reasons:

1st. The contract for city lighting has been let to us at an increased figure over former years.

(Deposition of Charles H. Coffin.)

2d. There is a movement among street-car people to install an electric-car system, which bids fair to succeed in the near future.

3d. The San Joaquin Ice Company is adding a creamery to their already extensive plant, which will require additional power.

4th. The company has found that it can safely make a raise in the rates of many of its consumers and still retain their custom, and this policy is being gradually carried out.

5th. There is a gradual growth of the business, due to the growth of the city.

Hence, there is every reason to anticipate a handsome increase of the company's business before the end of the year. The company partially constructed a reservoir large enough to prevent a recurrence of last year's failure in water supply. The reservoir can be completed at small expense in time to be filled in case it will be needed for next summer's supply.

SAN JOAQUIN ELEC. CO.

[Company's Seal]

JOHN J. SEYMOUR,

President.

J. M. COLLIER, Secty.

Q. Did you ever receive any other statements in regard to the condition of the San Joaquin Electric Company?

A. Yes, sir, I received statements every month from the time of its organization, down to August, 1899.

(Deposition of Charles H. Coffin.)

Q. Did you ever receive any statements as to the condition of the San Joaquin Electric Company on June 30, 1899? A. Yes, sir.

Q. Look at that paper which I now hand you, and state whether or not that is the statement that you received? A. Yes, sir.

Mr. BUELL.—We offer that statement in evidence, which is in words and figures following, to wit:

(Objected to by counsel for complainant, as incompetent, irrelevant and immaterial.)

Statement offered in evidence marked "Exhibit No. 2," and is in words and figures following, to wit:

**Exhibit No. 2.**

STATEMENT OF THE FRESNO WATER CO.

and

THE SAN JOAQUIN ELECTRIC CO.

January 1st, '99, to June 30th, '99.

WATER CO.

Receipts:

1899. Balance,	1,003.47	
Jan. 1. From consumer . .	3,625.97	
Feb'y. From consumer . .	3,409.30	
Mch. From consumer . .	3,822.65	
Apl. From consumer . .	3,213.75	
May From consumer . .	3,777.20	
June From consumer . .	3,629.15	21,478.02
From banks and		
dividends . . .	12,299.89	34,781.38

(Deposition of Charles H. Coffin.)

## ELECTRIC CO.

Jan. 1. Balance . . . . .	1,188.35	
Jan. 30. From consumers .3,912.71		
Feb. From consumers .4,561.66		
Mch. From consumers .3,840.87		
Apl. From consumers .4,150.18		
May From consumers .3,768.56		
June From consumers .4,828.84	25,062.82	
From banks, etc..	5,193.89	
Amt. due from city for which we hold warrants	2,833.58	
Amt. from Hanford branch since		
Jany. 1st at 600 per Mo.	3,600.00	37,878.64

## WATER CO.

Disbursements:

1899.

Jany. Salaries . . . . .	\$ 755.75	
Construction . . .	403.00	
Fuel and power..	1,040.85	
Expense int. & re- pairs . . . . .	350.28	2,549.88
		<hr/>
Loans repaid . . .		1,000.00
Feb. Salaries . . . . .	747.65	
Expenses, repairs, taxes, etc. . . . .	503.71	



(Deposition of Charles H. Coffin.)

	Construction . . .	58.66	
	Fuel and power..	938.99	2,249.01
			<hr/>
	Loans repaid . . .		1,883.65
Mch.	Salaries . . . . .	642.00	
	Expense int. and		
	repairs .. . . .	384.03	
	Construction . . .	7.03	
	Fuel and power.	753.28	1,786.34
			<hr/>
	Bond Int. . . . .		9,750.00
April.	Salaries .. ..	797.50	
	Expense int.		
	and Taxes... ..	242.35	
	Construction ..	873.70	
	Power .. . . . .	500.00	2,413.55
			<hr/>
	Loans repaid ..		2,500.00
May.	Salaries . . . . .	722.00	
	Expenses taxes		
	and int.. . . . .	354.93	
	Construction ..	702.80	
	Fuel and power.	700.00	2,479.73
			<hr/>
	Loans repaid..		2,000.00
June.	Salaries . . . . .	722.00	
	Expense, int.		
	etc. . . . .	324.81	

(Deposition of Charles H. Coffin.)

Construction ..	722.81	
Fuel .....	500.00	2,269.62
	<hr/>	
Loans repaid ..		3,893.45
		<hr/>
		34,775.23

## ELECTRIC CO.

1899.

Jany.	Salaries .....	1,203.40	
	Expenses, tax-		
	es and int...	367.80	
	Construction ..	624.40	
	Gen. supplies .	680.58	2,876.18
		<hr/>	
	Loans repaid .		2,100.00
Feby.	Salaries .....	507.85	
	Genl. supplies .	610.77	
	Construction ..	504.85	3,025.62
	Loans repaid ..		2,400.00
Mch.	Salaries .....	1,366.31	
	Expense int.		
	and repairs..	630.11	
	Genl. supplies .	213.81	
	Construction ..	258.77	2,469.00
		<hr/>	

## (Deposition of Charles H. Coffin.)

	Loans repaid ..	4,875.00	
April.	Salaries .....	1,184.29	
	Expenses int. and repairs .	361.99	
	Genl. supplies.	291.65	
	Construction ..	447.21	2,285.14
		<hr/>	
	Loans repaid...	1,650.00	
May.	Salaries .....	1,511.05	
	Expense, int., and repairs .	670.05	
	Genl. supplies .	465.67	
	Construction ..	317.90	2,964.67
		<hr/>	
	Loans repaid...	1,000.00	
June.	Salaries .....	1,093.00	
	Expense, int., etc. ....	962.75	
	Genl. supplies.	319.81	
	Construction ..	474.42	2,849.98
		<hr/>	
	Loans repaid...	5,676.06	
	Pd. Hanford ex- tension to ap- ply on a c construction of same ....	3,600.00	37,771.65
			<hr/>
			72,546.88
			113.14
			<hr/>
			72,660.02

(Deposition of Charles H. Coffin.)

## TRIAL BALANCE.

## SAN JOAQUIN ELECTRIC CO.,

June 30, '99.

Treas. ....	106.99
Property .....	2,177.45
Perm. imps. ....	800,000.00
Water Co. ....	165,000.00
Profit and loss.....	39,682.49
Bonds on hand .....	31,000.00
Real est. ....	625.36
Mdse. ....	111.97
Hanford extension .....	33,590.33
Carbon a c .....	379.63
Expense a c .....	1,240.83
Mercantile Trust Co. ....	31,500.00
New construction (Water res).....	709.51
Construction a c .....	356,502.50
Salary .....	7,857.65
Int., 933.06; Taxes, 1,206.82.....	2,139.88
Repairs, 231.56; Arc supplies, 145.35.....	376.91
Legal expense .....	576.53
Sundry a c due us.....	680.07
	<hr/>
	1,474,258.10
Capital stock .....	790,000.00
Bond a c.....	555,000.00
Bills payable .....	17,750.00

(Deposition of Charles H. Coffin.)

Genl. Elec. Co.....	6,380.37
Bond int.....	31,500.00
Current sold .....	27,078.54
Water Co.....	18,066.20
Lacy & Co. (Hanford Line).....	23,114.08
Sundry Local a c we owe.....	5,368.91
	<hr/>
	1,474,258.10

TRIAL BALANCE:

FRESNO WATER CO.

June 30, 1899.

Treas. ....	6.15
Perm. imp.....	637,044.14
Franchise .....	5,000.00
Bond int.....	24,375.00
Power .....	3,000.00
Expense a c.....	1,279.21
Taxes and int.....	548.03
San J. Elec. Co.....	18,066.20
Fuel .....	552.46
Repair .....	419.38
Salary .....	4,386.90
Real Estate .....	20,660.25
Capital stock ...	325,000.00
Bond a c .....	325,000.00
Loss and gain...	21,468.84

(Deposition of Charles H. Coffin.)

Sundry Water Col.	162.48	
Tapping . . . . .	97.50	
Water collections.	21,140.37	21,400.35
Fresno Natl Bank		2,284.09
Other a c . . . . .		628.69
Crane Co. (dispu- ted) . . . . .		4,930.75
Ill. Trust & Sav. Bk. (Int.) . . . . .		14,625.00
	}	}
	715,337.72	715,337.72

Q. Did you receive a statement from the San Joaquin Electric Company, dated April 30, 1890?

A. Yes, sir.

Q. Look at the paper, which I now hand you, and state whether or not that is the statement that you received?

A. Yes, sir, I received it in a letter from the secretary of the company dated May 18, 1899.

Mr. BUELL.—We offer that statement in evidence, which is in the words and figures following, to wit:

(Objected to by counsel for complainant, as incompetent, irrelevant, and immaterial.)

Statement offered in evidence marked "Exhibit No. 3," and is in words and figures following, to wit:

(Deposition of Charles H. Coffin.)

**Exhibit No. 3.**

**STATEMENT FRESNO WATER CO.**

30th APRIL, 1899.

Real Estate . . . . .	\$20,660.25
Permanent improve- ments . . . . .	636,540.80
Treasurer . . . . .	17.71
Franchise . . . . .	5,000.00
Interest on bonds . . . . .	21,125.00
Power . . . . .	2,000.00
Office expense . . . . .	297.81
Taxes . . . . .	271.28
Interest . . . . .	119.60
San J. E. Co. . . . .	20,613.22
Expense . . . . .	537.50
Fuel . . . . .	552.46
Repair . . . . .	205.58
Salary . . . . .	2,942.90
Capital stock . . . . .	\$325,000.00
Bond account . . . . .	325,000.00
Loss and gain . . . . .	21,468.84
Sundry water col. . . . .	157.70
Fresno National Bank . . . . .	3,500.15
Crane Company . . . . .	4,962.50
Union Oil Co. . . . .	200.00
Illinois Trust & Sav. Bank . . . . .	11,375.00
Tapping . . . . .	77.50

(Deposition of Charles H. Coffin.)

Krogh Manufacturing Co. ....	851.10	
Westinghouse Elec. Co. ....	533.00	
Water collections....	13,758.32	
Liddell .....	2,000.00	
O. J. Woodward....	2,000.00	
	<hr/>	
	710,884.11	710,884.11

Receipts.

1899. Bal. Jan. 1, 1899.	1,003.47	
January .....	3,625.97	
February .....	3,409.30	
March .....	3,753.50	
April .....	3,213.75	14,002.52
From banks & individuals	9,144.15	
	<hr/>	
		\$24,150.14

Floating Indebtedness:

Banks and individuals.	\$ 7,500.00	
Due on open accounts.	1,584.10	
Bonded interest 7 mo..	11,375.00	20,459.10
Assets †		
Uncollected accounts...	\$570.10	
Balance on hand.....	17.71	
San J. E. Co.....	20,613.22	21,201.03



(Deposition of Charles H. Coffin.)

## STATEMENT OF SAN JOAQUIN ELECTRIC CO.

April 30th, 1899.

First National Bank	\$422.83
Property account .	2,067.45
Permanent Imps. . .	800,000.00
Fresno W. stock . .	165,000.00
Profit and loss . . .	39,682.49
Bonds on hand . . .	31,000.00
Real estate . . . . .	625.36
Mdse. . . . .	60.92
Hanford exten. con.	33,199.63
Carbon a c . . . . .	298.12
Expense . . . . .	1,348.61
Interest . . . . .	434.80
Interest account . .	26,250.00
Water Storage . . . .	115.35
Salary a c . . . . .	5,322.00
Construction a c . .	356,226.35
Arc light supplies	93.57
F. J. Burleigh . . . .	29.97
Hopkins Agl. Wks.	160.60
T. W. Taggart . . . .	2.70
D. Darden . . . . .	20.36
Taxes . . . . .	51.46
San J. Mining Co. . .	169.85
Wm. Mayne . . . . .	30.00
W. Leavitt . . . . .	50.00
Russell . . . . .	73.50

(Deposition of Charles H. Coffin.)

Oakland Iron Wks.	2.04	
Repair a/c . . . . .	171.81	
Capital stock . . . .		\$790,000.00
Bond a/c . . . . .		555,000.00
Bills Payable . . . .		17,750.00
General Elec. Co. . .		6,442.91
Mercantile T. Co. . .		26,250.00
Current . . . . .		18,126.69
Water Co. . . . .		20,613.22
Lacy Co. . . . .		23,923.38
Individual accounts		4,803.57
		<hr/>
	1,462,909.77	1,462,909.77

## Receipts:

Bal. in bank, Jan 1, '99		\$1,188.35
<b>Jany.</b> current sales . . . . .	\$4,249.30	
<b>Feb.</b> current sales . . . . .	4,863.20	
<b>March</b> current sales . . . .	4,194.47	
<b>April</b> current sales . . . . .	4,439.72	
Supplies sold during Jan.		
Feb. and March . . . . .	967.63	18,714.32
Received from banks . . .	4,450.00	
Received on account . . .	151.10	4,601.10
		<hr/>

\$24,503.77

## Floating Indebtedness:

Bills payable . . . . .	17,750.00
General Electric Co. . . . .	6,442.91
Water Co. . . . .	20,613.22

(Deposition of Charles H. Coffin.)

Due employees. . . . .	4,121.05	
Open accounts. . . . .	682.52	
Bond Interest. . . . .	26,250.00	75,859.70

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Assets:

Bal. on hand. . . . .	422.83	
Unpaid accts. current. . .	1,728.02	
Ledger acct. . . . .	1,089.02	2,817.04
Bonds on hand . . . . .	31,000.00	34,239.87

Q. Did you receive any letter accompanying the statement last offered in evidence? A. Yes, sir.

Q. Look at the letter which I now hand you, and state whether or not that is the letter that accompanied the statement?

A. That is the letter enclosing the statement.

Q. Do you know the signature of that letter?

A. I do.

Q. Is that the signature of J. M. Collier, Secretary?

A. Yes, sir.

Q. He was secretary of the company at that time?

A. Yes, sir.

Mr. BUELL.—We offer that letter in evidence, which has been shown to the witness, and ask to have the same marked Exhibit No. 4, which is in words and figures following, to wit:

(Objected to as incompetent, irrelevant, and immaterial.)

Letter offered in evidence, marked Exhibit No. 4, and is in the words and figures following, to wit:

(Deposition of Charles H. Coffin.)

Exhibit No. 4.

J. J. Seymour, Prest. & Mangr. J. M. Collier, Sec.

J. S. Eastwood, Vice-Prest. & Supt.

SAN JOAQUIN ELECTRIC CO.

Fresno, Cal., May 18, 1899.

C. H. Coffin, Esq., 215 Dearborn St., Chicago, Ill.

Dear Sir: Enclosed herewith find a hastily prepared statement of the Water and Electric Companies from January first to May first.

You will notice that the receipts for the past four months for current and supplies, amounts to \$18,714.32. Included in this amount, however, is \$600 per month from the Hanford Extension which is applied directly to reduce the cost of constructing said line. There is accrued since January first—owing to the delinquency by the City, \$1,728.00 which, added to the \$18,714.00, would make a total of \$20,422, or about \$5,100 per month. The two plants seem to be in better condition now than for the past three years.

For the first time since starting up the Electric plant will be able to run the Water Company without the use of fuel, running now entirely with electric current.

I presume Mr. Seymour has written you fully the general details.

Very truly yours,

J. M. COLLIER,

Secretary.

Enclosure.

(Deposition of Charles H. Coffin.)

Q. You received a number of other letters from the officers of the company, did you not? A. Yes, sir.

Q. I will ask you whether or not you received a letter from J. M. Collier, secretary, dated July 11, 1899?

A. Yes, sir.

Q. Look at the letter which I now hand you, and state whether or not that is the letter which you received from J. M. Collier? A. Yes, sir.

Mr. BUELL.—We offer that letter in evidence as Exhibit No. 5, which is in the words and figures as follows, to wit:

(Objected to as incompetent, irrelevant, and immaterial.)

Letter offered in evidence marked Exhibit 5, and is in the words and figures following, to wit:

**Exhibit No. 5.**

Fresno, Cal., July 11, 1899.

Chas. H. Coffin, Esq., Chicago, Illinois.

Dear Sir: I have been shown an extract from your letter to Mr. Seymour, in which you request statements of the two companies since January first. In compliance I herewith enclose detailed statement of expenditures and receipts by the month since January first to June 30th. Also trial balance from the two companies showing the amount owing us and the amount we owe.

From the foregoing you will see that it has been impossible for us to make any provision to meet the July interest of the San Joaquin Electric Company Bonds.

(Deposition of Charles H. Coffin.)

Mr. Seymour was called to New York by telegrams on the 1st from Mr. Street and may see you on his return.

Trusting that this will give you a true insight to the business of the two companies, I remain,

Very truly yours,

J. M. COLLIER,

Secretary.

Enclosure.

Q. Mr. Coffin, did you know of any negotiations tending to a reorganization of the San Joaquin Electric Company?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. Yes, sir.

Q. When were the first negotiations entered into and by whom?

(Objected to by counsel for complainant, as incompetent, irrelevant, and immaterial.)

Q. State all the facts in connection with it?

Same objection by counsel for complainant.

Q. The first negotiations began in April, 1898, in London, and were conducted by C. H. Coffin and William O. Cole, representing the San Joaquin Electric Company, and Captain Nares representing the Fresno Water, Land & Irrigation Company. It contemplated the absorption of the San Joaquin Electric Company, and the Fresno Water Company by the Fresno Canal & Irrigation Company.

(Deposition of Charles H. Coffin.)

Q. On whose behalf were the negotiations conducted by Captain Nares?

A. On behalf of the Fresno Land & Irrigation Company, which was owned by several large English Trust Companies.

Q. Was the American Securities Agency, Limited, in any way interested in these negotiations?

A. No, sir.

Q. Were Messrs. Seymour and Eastwood, or either of them, interested in these negotiations?

A. Mr. Cole and I represented their stock.

Mr. WOOD.—It is understood that all these questions are answered subject to my objection.

Mr. BUELL.—Oh, yes.

Q. These negotiations were not carried through?

A. They finally failed in December, 1898.

Q. Do you know of any other negotiations of any character tending or leading to the reorganization of this Company?

A. Yes, sir. All the parties interested in the property were presented with a plan of reorganization, which I drew up early in January, 1899.

Q. Who were interested in that?

A. The general Electric Company, which is in New York by Dr. Addison, their California agent; Charles F. Street of Street, Wykes, and Company, representing the American Securities Agency, who claimed to represent a majority of the bonds of the San Joaquin Elec-

(Deposition of Charles H. Coffin.)

tric Company, Mr. Elijah Coffin of Schenectady, New York, and London, England, representing \$43,000.00 of the bonds of the San Joaquin Electric Company; the British Linen Bank of London, England, representing nearly one-half of the bonds of the San Joaquin Electric Company; E. H. Gay of Boston, representing the bondholders of the Fresno Water Company; Mr. John J. Seymour and Mr. Eastwood holding a majority of the stock of the San Joaquin Electric Company, and Mr. Drexler of San Francisco, representing the owners of the Gas Company at Fresno. That is all.

Mr. WOOD.—When was that meeting held, did you state, Mr. Coffin?           A. No meeting was held.

Q. Well, you said you drew up a plan of reorganization?

A. Which was submitted to them. Mr. Street was here and consulted me about it, and the other interests were all consulted by letters. Mr. Elijah Coffin was here.

Mr. BUELL.—When was the subject of these negotiations, the last negotiations of which you testified, first opened or contemplated, that you know of?

A. Early in January, 1899. There had been previous conversations with some of the parties in interest.

Q. With the same idea in view?           A. Yes, sir.

Q. That was before there had been a default in the payment of the interest due on January 1, 1899, on the bonds of the San Joaquin Electric Company, was it not?



(Deposition of Charles H. Coffin.)

A. The first consultations and conversations were held prior to that time.

Q. In which you had in contemplation the reorganization of the company?      A. Yes, sir.

Q. Look at the paper which I now hand you, Mr. Coffin, and state if you are familiar with that plan of reorganization?      A. Yes, sir.

Q. By whom was that formulated and presented, if you know?

A. This is the plan that was prepared by Charles F. Street, indorsed by the American Securities Agency, and submitted to the bondholders of the San Joaquin Electric Company in London.

Q. When was that plan first contemplated, if you know, about what time?

A. In January, 1899, or February, 1899, I am not sure which. I think in January.

Q. Does that plan in any way grow out of or is it connected with the conversation which you had with Mr. Street prior to January 1, 1899?

Mr. WOOD.—You may add to the objection which I have already made, this further objection, on the ground that it is merely hearsay, on the witness' part as to his knowledge of what took place in London.

Mr. BUELL.—How do you know it was presented to the bondholders in London?

A. I was the holder of two of the bonds and received this plan from the American Securities Agency.

(Deposition of Charles H. Coffin.)

Q. Was there any notice that this was to be presented to the bondholders?

A. My recollection is that the notice was that they had considered it, and approved it, in London.

Q. Now, read my question that is not answered.

(Question read as follows: "Does this plan in any way grow out of, or is it connected with the conversations which you had with Mr. Street prior to January 1, 1899?")

A. I don't know.

Q. You don't know?           A. No, sir.

Q. Mr. Buell, we offer the plan of reorganization shown the witness, and identified by him in evidence, dated March 30, 1899.

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

Plan offered in evidence marked Exhibit No. 6, and is in the words and figures following, to wit:

**Exhibit No. 6.**

THE AMERICAN SECURITIES AGENCY, LIMITED.

Registered Address for Cable or Telegram, 46 Queen

Victoria Street, "Platonical," London.

London, 30th March, 1899.

PROPOSED PLAN OF REORGANIZATION.

SAN JOAQUIN ELECTRIC COMPANY.

It is proposed to organize a new Corporation, capitalized as follows:

(Deposition of Charles H. Coffin.)

First—Capital stock authorized and issued....\$750,000.

First mortgage prior lien 5 per cent 40-year gold bonds.

Authorized issue..... 300,000.

Actual immedate issue..... 175,000.

Consolidated mortgage 4 per cent 40-year gold bonds.

Authorized issue ..... 300,000.

Actual immediate issue..... 257,000.

Second.—Of the new securities, the present holders of bonds shall receive for each \$1,000 bonds deposited.

New consolidated mortgage 4 per cent bonds..... 600.

4 shares fully paid capital stock..... 400.

Third.—Underwriters will be asked to subscribe at 90 for \$175,000 prior lien bonds, required for new capital requirements and expenses of reorganization.

For each \$900, subscribers will receiver 5 per cent prior lien bonds..... 1,000.

20 shares fully paid capital stock..... 2,000.

Fourth.—\$100,000 of the capital stock will be issued to certain parties in Fresno, for the water rights transferred by them, to the old company, providing they facilitate the foreclosure of the mortgage.

(Deposition of Charles H. Coffin.)

Fifth.—Depositing bondholders to have the right to subscribe for new prior lien bonds in proportion to their present holding.

Sixth.—All of the stock subscribed for by underwriters shall be deposited with the American Securities Agency, Limited, so that the control of the company may be permanently in the hands of the representatives of the bondholders.

Seventh.—Inasmuch as the expenses of reorganization will be provided for by the issue of prior lien bonds, no further assessment beyond the  $\frac{1}{2}$  per cent already paid will be made.

Q. Have you had any conversation with Mr. Street in regard to this proposed plan of reorganization just shown you?      A. Yes, sir.

Q. Was anything said as to whether or not that was presented to the bondholders in London?

A. Yes, sir.

Q. Was anything said as to when it was presented to them?      A. Yes, sir.

Q. When was it?

A. About the close of January or early in February, 1899. Mr. Street came here about January 20, 1899, and discussed my plan of reorganization, of which he expressed his entire approbation, but stated that he had been instructed by the London people—

(Deposition of Charles H. Coffin.)

Q. Whom do you mean by the London people?

A. The American Securities Agency. To proceed to Fresno and make a complete examination, and report to London in person, if possible, which he did early in February, 1899.

Mr. WOOD.—I object to the answer, and move that it be stricken out on the ground that it is incompetent, irrelevant, and immaterial, and hearsay on the part of the witness.

Mr. BUELL.—Do you know that he reported in person in London?

A. He told me later on that he had done so.

Q. Mr. Coffin, in the proposed plan of reorganization shown you, and as set out in the bill of intervention, the following clause is inserted: "Paragraph 4th. \$100,000 of the capital stock will be issued to certain parties in Fresno for the water rights transferred by them to the old company, providing they facilitate the foreclosure of the mortgage." Do you know who is referred to by "Certain parties in Fresno?"

A. Yes, sir. John J. Seymour, and Mr. Eastwood are the parties in Fresno referred to.

Q. What were their official connection with the Company at that time?

A. John J. Seymour was president and Mr. Eastwood vice-president, of the San Joaquin Electric Company, and they were the owners of a majority of the stock of the company.

(Deposition of Charles H. Coffin.)

Q. What was the relation between the San Joaquin Electric Company and the Fresno Water Company on January 1, 1899?

A. The San Joaquin Electric Company was the owner of all the shares of stock of the Fresno Water Company.

Q. And the Fresno Water Company was really a part of the San Joaquin Electric Company?

A. Yes, sir, it was its property.

Q. When was that property of the Fresno Water Company acquired by the San Joaquin Electric Company?

A. About June, 1895, shortly after the San Joaquin Electric Company was organized.

Q. How long did the San Joaquin Electric Company continue to own and control the property of the Fresno Water Company?

A. It does yet.

Q. The same relations exist between them to-day?

A. Yes, sir.

Q. Mr. Coffin, how long have you been engaged in the business of investment securities?

A. Since 1867.

Q. In connection with that business have you ever had any occasion to investigate and determine as to the solvency or insolvency of companies of this character?

A. Yes, sir, I have had sixty-three of them under my control at one time and another.

Q. Have you had, during that time, any occasion to examine the statements of other companies, similar to statements furnished by the officers of the San Joaquin Electric Company, which has been offered in evidence?

(Deposition of Charles H. Coffin.)

A. Yes, sir.

Q. You have examined the figures, have you, that were submitted to you by the officers of the San Joaquin Electric Company, as shown in the statements which were furnished you and which have been offered in evidence?

A. Yes, sir.

Q. From the statements furnished to you by the officers of the San Joaquin Electric Company, as to the condition of the Company on January 1, 1899, which has been offered in evidence, do those figures show the company to be solvent or insolvent?

(Objected to by counsel for complainant, as incompetent, irrelevant and immaterial, and it is understood that counsel for complainant objects to all this line of examination, for the reasons stated.)

A. Solvent.

Q. From the figures shown in the statements furnished you of the condition of the company on July 1st. or June 30, 1899, do those figures show the company to be solvent or insolvent.

A. They show the company to be solvent.

Q. Can you state on what you base your judgment as to the solvency of the company?

A. The balance sheets submitted monthly, together with the statements in evidence show the company to have a surplus income in excess of its expenses for the six months from January 1, 1899, to June 30, 1899, of \$42,328.16.

(Deposition of Charles H. Coffin.)

Q. How much would it have required during that period to have met the interest on the bonds to have prevented a foreclosure?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. \$26,250.00.

Q. What surplus would that leave over and above the amount required to meet the interest on the bonds?

A. \$16,078.16.

Q. Was anything said to you during the latter part of 1898, or the fore part of 1899, by Mr. Street as to whether he considered the company solvent or insolvent?

A. Yes, sir.

Q. State what he said.

A. He visited here about the 20th of January, and he agreed with me in conversation that from the statements submitted, the company was in a solvent condition.

Q. Did he give any reason or reasons why he thought a reorganization was necessary or desirable?

A. No.

Q. Do you know whether at the time the suit was commenced to foreclose the trust deed given to secure the bonds that the complainant, The Mercantile Trust Company, had notice or knowledge that the purpose of the foreclosure was to bring about a reorganization of the company, of the San Joaquin Electric Company?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)



(Deposition of Charles H. Coffin.)

A. Yes, sir.

Q. Did they or did they not?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. They did.

Q. Was anything said by Mr. Street or by anyone connected with the American Securities Agency, Limited, as to whether or not the commencement of the foreclosure proceedings would depend upon an agreed plan for the reorganization of the company?

(Objected to by counsel for complainant, as incompetent, irrelevant, and immaterial.)

A. Yes, sir.

Q. What was said?

A. There was a negotiation for the surrender of our stock in order to avoid a foreclosure. Mr. Street came out here, and negotiated with the First National.

Q. Was that attempt to secure the stock to enable Mr. Street or the American Securities Agency, Limited, to complete a reorganization of the Company without foreclosure?

A. Yes, sir.

Q. Was that because the American Securities Agency, Limited, or Mr. Street, considered that was necessary in order to prevent the foreclosure?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. No, sir, I don't think they considered it necessary.

Q. Or was it contemplated in order to get control of this company?

(Deposition of Charles H. Coffin.)

(Objected to by counsel for complainant, as incompetent, irrelevant, and immaterial.)

A. In order to cut out the stock and destroy it.

Q. And to get control of the company?

A. Yes, sir.

Mr. WOOD.—I object to the question as incompetent, irrelevant, and immaterial, and move that the answer be stricken out.

Mr. BUELL.—Q. Do you know whether or not it was a part of the scheme of foreclosure, and reorganization that John J. Seymour, president of the company should be appointed receiver in case the foreclosure of the trust deed or mortgage was instituted?

(Objected to by counsel for complainant as incompetent, irrelevant, and immaterial.)

A. Yes, sir. There was an agreement to that effect, I have been informed.

Q. By whom were you informed?

A. Mr. Seymour wrote me, and my recollection is that Mr. Street informed me that that arrangement had been made.

Mr. WOOD.—I object to that as incompetent, irrelevant and immaterial, and move that the answers be stricken out, on the grounds stated, and also as to what Mr. Seymour informed him on the ground that it is hearsay.

Mr. BUELL.—I guess that is all. You may cross-examine.

(Deposition of Charles H. Coffin.)

Cross-Examination.

(By Mr. WOOD.)

Q. Mr. Coffin, I believe you testified that you are a stockholder of the San Joaquin Electric Company?

A. Yes, sir.

Q. Are you familiar with the plant of the Electric Company?      A. Yes, sir.

Q. In what way?      A. I have been there.

Q. When were you there?

A. I don't remember.

Q. About when?      A. When it was building.

Q. About when was that?

A. About 1896, in the summer.

Q. Have you been in Fresno since the year 1896?

A. I have not.

Q. From your own personal observation and inspection you know nothing about the physical condition of the property?      A. I do not.

Q. From 1896 up to the time that these foreclosure proceedings were instituted, were you an officer of the company, of the San Joaquin Electric Company?

A. I was vice-president for a while.

Q. How long were you vice-president of it?

A. I don't remember.

Q. Well, about when?

A. Hold on. I am not sure I was either. No, let me correct that, I was not.

Q. You never were an officer?

(Deposition of Charles H. Coffin.)

A. I never was an officer.

Q. Were you ever a director of the company?

A. Yes, sir.

Q. For what period were you a director of it, about?

A. I think all the time up to 1899.

Q. Were you ever present at a directors' meeting, personally?        A. No.

Q. From the year 1896, up to the time this suit was instituted, did you ever personally examine yourself the books of the Electric Company?        A. No, sir.

Q. Your only knowledge of its financial condition is confined to the statements rendered to you by the secretary, and which have been introduced in evidence?

A. And examination made by experts employed by us for the purpose.

Q. Do you know Mr. Seymour and Mr. Eastwood?

A. Yes, sir.

Q. How long have you known them?

A. I have known Mr. Seymour about twenty years; Mr. Eastwood, since 1895.

Q. When did you last see them?

A. Mr. Eastwood was there in the fall of the year 1898, I think.

Q. Is that the last time you saw him?

A. Yes, sir.

Q. When was the last time you saw Mr. Seymour?

A. Not since 1897.

Whereupon the further taking of testimony is adjourned to Tuesday, October 23, 1900, ten o'clock A. M.

(Deposition of Charles H. Coffin.)

MERCANTILE TRUST COMPANY,  
Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

A. Y. CHICK and W. T. LEWIN,

Intervenors.

Tuesday, October 23d, 1900, 10 o'clock A M.

Parties met pursuant to adjournment.

Present: H. C. WOOD, Esq., Solicitor on Behalf of the  
Complainant.

C. C. BUELL, Esq., Solicitor on Behalf of the  
Intervenors.

Continuation of cross-examination of Charles H. Coffin.

(By Mr. WOOD.)

Q. Mr. Coffin, you stated that you were a stockholder  
of the San Joaquin Electric Company? A. Yes, sir.

Q. And you are now? A. Yes, sir.

Q. How many shares of stock do you own, Mr. Coffin?

A. I am really the owner of 2,650 shares. That is  
not all in my name.

Q. How much of it is in your name?

A. I was including stock belonging to Mrs. Coffin and  
stock owned by the First National Bank, some stock  
which I am interested in.

(Deposition of Charles H. Coffin.)

Q. I would like to have you state as fully as you can.       A. I cannot say.

Q. Isn't it a fact, Mr Coffin, that all the stock that you own of the San Joaquin Electric Company is out of your control?

(The question was objected to by solicitor for intervenors, as incompetent, immaterial, and irrelevant)

A. It is not a fact, no. I have a certificate for 350 shares down in my box. That is not out of my control.

Q. You have a certificate for 350 shares?

A. Yes.

Q. That is now in your own possession?

A. Yes.

Q. Practically the rest of the stock outside of that is not; isn't that the fact?

(The question was objected to by solicitor for intervenors, as incompetent, immaterial and irrelevant.)

A. It is held under an agreement with the First National Bank of Chicago under my control.

Q. Mr. Coffin, isn't it a fact that all this stock of the San Joaquin Electric Company that once did belong to you is now owned by the First National Bank?

(The question was objected to by solicitor for intervenors, as incompetent, irrelevant and immaterial.)

A. It is not.

Q. Isn't the greater part of it?

A. Two thousand, two hundred shares, that is owned by them. It is held under an agreement between me and them.

(Deposition of Charles H. Coffin.)

Q. What is the nature of that agreement? Is it simply hypothecated there as collateral?

(The question was objected to by solicitor for intervenors, as incompetent, immaterial, and irrelevant.)

A. Yes, under a special agreement.

Q. Isn't it a fact that under that agreement the title to the stock is now in the First National Bank?

(The question was objected to by solicitor for intervenors, as incompetent, immaterial and irrelevant.)

A. It is not; it is in my name.

Q. Didn't you by that agreement transfer all your right, title and interest in and to the stock to the First National Bank??

(The question was objected to by solicitor for intervenors, as incompetent, immaterial, and irrelevant.)

A. Subject to my right to control it.

Q. What do you mean by "subject to your right to control it?"

(The question was objected to by counsel for intervenors as incompetent, irrelevant, and immaterial.)

A. I have a right to sell it or vote it.

Q. But the proceeds are to go to the bank?

(The question was objected to by counsel for intervenors as incompetent, immaterial, and irrelevant.)

A. Ninety per cent of it.

Q. So that all your original holding of stock was some 2,010 shares, I think you said?

A. Two thousand six hundred and fifty.

Q. Two thousand six hundred and fifty shares. Over

(Deposition of Charles H. Coffin.)

1,000 of those shares are held by the First National Bank, is that correct?

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. Two thousand two hundred shares are held by them.

Q. Two thousand two hundred shares are held by the First National Bank?      A. Yes, sir.

Q. In the manner previously indicated by you?

A. Yes, sir.

Q. Now, as regards the balance of those shares, Mrs. Coffin owns some of them?

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. Yes.

Q. And you have some others of them absolutely in your possession?

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. Yes.

Q. About 350 you stated?      A. I think so.

Q. That absolutely belongs to you. It is not pledged or hypothecated?

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. No, sir.

Q. Has there been any formal transfer on the books of the Company of the stock owned by you to the First National Bank?



(Deposition of Charles H. Coffin.)

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. I think not.

Q. You think not?

A. I think not.

Q. As a matter of fact, Mr. Coffin, isn't the bank the owner of the certificates with the understanding that you are their agent to sell them?

(The question was objected to by solicitor for intervenors as incompetent, immaterial, and irrelevant.)

A. No, they are held as collateral to my note.

Q. Mr. Coffin, you stated on your examination in chief the other day, that you knew that at the time the Mercantile Trust Company, the complainant, filed its bill to foreclose, that it had knowledge of the proposed plan of reorganization of the San Joaquin Electric Company. I would like to have you state how you knew that the Mercantile Trust Company had that knowledge?

A. At the time of the filing of the bill for foreclosure?

Q. Yes, and in answer to that question on your examination in chief as to whether or not you knew at the time the suit was commenced to foreclose the trust deed given to secure the bonds that the complainant, the Mercantile Trust Company, had notice or knowledge of the purpose of the foreclosure to bring about a reorganization of the San Joaquin Electric Company, you replied yes. I would like to have you state how you knew this?

A. My recollection is that Mr. Charles F. Street informed me that he had made a special bargain with them

(Deposition of Charles H. Coffin.)

to reduce the cost of foreclosure prior to the beginning of the suit.

Q. That is not responsive to the question. You testified that you knew at the time the suit was commenced by the Mercantile Trust Company that it had knowledge of the proposed plan of reorganization. How did you know it had any knowledge of the proposed plan of reorganization?

A. I would state from memory that Mr. Street informed me so.

Q. And is that all the knowledge you have, Mr. Coffin, of the knowledge of the Mercantile Trust Company as to this proposed plan of reorganization?

A. I did know, but I don't know now. I cannot tell you now, but I feel quite sure that I did know at that time that they did know it.

Q. That is what I want to get at. I want to have you state your means of knowledge. I will put another question which you can answer. Do you know of your own personal knowledge, Mr. Coffin, that at the time this suit was commenced that the Mercantile Trust Company, the complainant, had notice or knowledge that the purpose of the foreclosure was to bring about a reorganization?

(The question was objected to by solicitor for intervenors as calling for a conclusion.)

A. No.

Q. Then, Mr. Coffin, is it not a fact that you had no personal knowledge as to what the Mercantile Trust

(Deposition of Charles H. Coffin.)

Company knew at the time it filed this suit about the plan of reorganization?      A. Only by hearsay.

Q. Did you ever employ any experts, Mr. Coffin, to examine the books of the San Joaquin Electric Company?

A. Yes, sir.

Q. Will you give me their names?

A. A Mr. Irving came down from Pasadena, a representative of an English Trust Company in California; J. M. Howells of San Diego an expert civil engineer. I think we sent out young Cole from our office.

Q. State when you had those examinations made, when you employed those gentlemen that you have just named to make examinations for you?

A. I was going to give another one, W. S. McMurtry, of San Francisco. I cannot tell you in answer to your last question exactly when the examination was made.

Q. About when did you employ these gentlemen that you have named?

A. I cannot tell you from memory.

Q. Well, about when?

A. Oh, we had somebody visit the plant in our interest at least as often as once a year.

Q. Yes, but did you have an examination made by these four or five gentlemen at or about the same time, that is within a few months?

A. No, at different times.

Q. Was it within the same year?

A. No, Irving's examination was in 1895, soon after the plant was started. I remember it was before the

(Deposition of Charles H. Coffin.)

plant was quite done. It might have been 1895 or early in 1896.

Q. When did you have the last examination of the plant made? About when, if you can't remember the exact date?

A. I don't know. I have got as many as a dozen expert engineer reports and one thing and another on it. I had three of them the other day with me when I came. They were made generally by experts in the interest of English Trust Companies to whom we were selling bonds.

Q. Did you as late as the year 1898 or 1899 employ anyone to examine the books of this company?

A. I cannot tell you.

Q. For what purpose were the experts that you have named employed for, to examine the physical condition of the plant or its books and financial condition?

A. Both. The last expert, I think was Dr. Addison, for the General Electric Company.

Q. I would like to have you state when the last report was made?

A. It was made by Dr. Addison, of the General Electric Company.

Q. When was that?

A. That was made when my plan of reorganization was presented.

Q. I think you testified that was in the year 1898?

A. In December.

Q. In December, 1898?                   A. Yes, sir.

Q. Was Dr. Addison employed by you or your firm?

(Deposition of Charles H. Coffin.)

A. No, by the General Electric Company.

Q. By whom was he employed?

A. By the General Electric Company.

Q. By the General Electric Company?

A. Yes, sir, they sent me his report.

Q. Now, did you, on your own behalf, or on behalf of yourself and any associates ever have any examination made after you received that report of Dr. Addison?

A. No.

Q. You did not?

A. No, I wrote him asking him to go down and examine it.

Q. He was the last person then that you employed to make an examination of it?

A. I did not employ him. We were negotiating for a reorganization of the company at the time. I had written several long letters to Dr. Addison on the subject and then I wrote him a letter asking him to go down and make a careful examination of it, which he did.

Q. Did you ever after asking him to make a careful examination of it ask anybody else to make an examination of it?

A. No.

Redirect Examination.

(By Mr. BUELL.)

Q. Mr. Coffin, state fully what information you had in regard to the knowledge of the Mercantile Trust Company that the foreclosure was brought for the purpose of effecting a reorganization of the San Joaquin Electric

(Deposition of Charles H. Coffin.)

Company and the Fresno Water Company. Who, if any-one talked to you about it and what date?

(The question was objected to by solicitor for complainant as incompetent, immaterial, and irrelevant.)

A. My recollection is that I was informed of it by Mr. C. F. Street.

Q. At that time representing whom?

A. Representing the American Securities Agency and a majority of the bondholders.

Q. What did he say to you, if you remember?

(The question was objected to by counsel for complainant as incompetent, immaterial and irrelevant.)

A. We were discussing the plan of reorganization and I objected to his plan very strongly as entailing a very heavy expense. He stated that he had arranged with the Mercantile Trust Company to reduce the expense largely prior to the beginning of foreclosure.

Q. Mr. Coffin, do you care to make any correction in your statement as to your official connection with either the San Joaquin Electric Company and the Fresno Water Company?      A. Yes.

Q. If so just state what correction you wish to make?

A. Since my testimony I recall the fact that I was vice-president of the Fresno Water Company from its organization until 1898, but I am not sure that I ever held an official position with the San Joaquin Electric Company.

Q. Other than as director?      A. Yes.

CHARLES H. COFFIN.

Subscribed and affirmed to before me this 31st day of October, A. D. 1900.

[Seal]

O. T. CODY,  
Notary Public.

It is stipulated by and between the parties that the copies of the exhibits which are incorporated in the foregoing deposition may be taken and considered as the original exhibits and be used in lieu thereof.

State of Illinois, }  
County of Cook. } ss.

I, the above-named Oliver T. Cody, of Chicago, Illinois, notary public in and for the county of Cook, and State of Illinois, named in the foregoing stipulation as the officer to take the deposition of the said Charles H. Coffin, the witness whose name is subscribed to the foregoing deposition, do certify that before the commencement of his examination as a witness in the above-entitled cause, he the said Charles H. Coffin, was duly affirmed by me to testify the truth in relation to the matters in controversy between the parties to said suit, so far as he, the said Charles H. Coffin, should be interrogated concerning the same; that the said deposition was taken at my office, 510, 100 Washington Street, in the city of Chicago, county of Cook and State of Illinois, the said examination being commenced on the 16th day of October, A. D. 1900, at the hour of 10 A. M., and continued by agreement of parties until October 23d, 1900, at the hour of 10 A. M., on which said last-mentioned date said deposition was completed,

and that after the said deposition was taken by me as aforesaid the interrogatories and cross-interrogatories and the answers thereto as written down were read over to the said Charles H. Coffin and thereupon the said deposition was signed and sworn to by the said Charles H. Coffin, before me at the place and on the date last aforesaid.

[Seal]

O. T. CODY,  
Notary Public.

[Endorsed]: 916. Coffin. Filed November 12, 1900.  
Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy.

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*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY,  
Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant.

A. Y. CHICK and W. F. LEWIN,

Intervenors.

**Stipulation as to Taking Testimony of A. Y. Chick and John Hart.**

It is hereby stipulated that the testimony of Alfred Young Chick and John Hart may be taken in the above-entitled cause on behalf of the intervenors A. Y. Chick and W. F. Lewin at the office of Richard Westcott, Vice and Deputy Consul-General of the United States of



America at London, England, upon written interrogatories hereto attached, and the testimony of the said Alfred Young Chick and John Hart when so taken may be transmitted to the clerk of the United States Circuit Court in and for the Ninth Circuit, Southern District of California, at Los Angeles, California.

CHARLES MONROE,  
ALEXANDER & GREEN,  
Solicitors for Complainant.

\_\_\_\_\_,  
Solicitors for Defendant.

GEORGE E. CHURCH,  
L. A. GROFF,  
WORKS & LEE,  
(IRA W. & C. C. BUELL)  
Solicitors for Intervenors.

The execution of this stipulation appears in certain schedules hereto annexed.

[Seal]

RICHARD WESTCUTT,  
Commissioner.

Interrogatories to be Propounded to Alfred Young Chick.

Interrogatory 1. Please state your name, residence and occupation.

Interrogatory 2. Please state whether or not you or the firm of A. Y. Chick & Company are the owners of any bonds of the defendant, San Joaquin Electric Company, and if you or either of you are the owner of any of said bonds state the number and amounts of said bonds and for how long a time you or the firm of A. Y. Chick & Company have been the holders of said bonds.

Interrogatory 3. Please state whether or not you ever attended any meeting of the bondholders of the said San Joaquin Electric Company in London, and if you did so attend when and where was it and at whose invitation did you attend and at whose instigation, if you know, was such meeting held. If there was more than one meeting of said bondholders please state the different times that you attended such meetings, at whose invitation you attended and at whose instigation such meetings were held, if you know.

Interrogatory 4. If in answer to the foregoing interrogatory, you have stated that you attended any meeting of the bondholders of said San Joaquin Electric Company, please state whether or not at any such meeting you, either for yourself or for the firm of A. Y. Chick & Company, authorized the Mercantile Trust Company to institute proceedings to foreclose the trust deed given to secure the bonds of the said San Joaquin Electric Company and whether or not you authorized or empowered the American Securities Agency, Limited or Mr. C. F. Street to act as the agent or attorney of you or the said firm of A. Y. Chick & Company to commence such foreclosure suit or to request the said Mercantile Trust Company to do so.

Interrogatory 5. Were you present at any meeting of the bondholders in which a scheme of reorganization of said company was presented to the bondholders, and if so at what meeting was it and who, if you know, presented said scheme?

Interrogatory 6. If in answer to the foregoing interrogatory, you have stated that a scheme of reorganization

was presented please state whether or not the proposed plan of reorganization as set out in the bill of intervention is a copy of the proposed plan submitted at such meeting of the bondholders.

Interrogatory 7. In the proposed plan of reorganization as set out in the bill of intervention a clause is contained therein as follows: "One hundred (\$100.00) dollars of the capital stock will be issued to certain parties in Fresno for the water rights transferred by them to the old company providing they facilitate the foreclosure of the mortgage." Please state, if you know, who the "certain parties in Fresno" were.

Interrogatory 8. Please state any other facts in connection with any meeting of the bondholders of the said San Joaquin Electric Company held in London or in connection with any proposed scheme of reorganization of said company or any other facts in connection therewith of which you have knowledge and in regard to which you have not been interrogated in any of the foregoing interrogatories.

**Cross-Interrogatories to be Propounded to Alfred Y. Chick.**

Cross-Interrogatory 1. If in answer to the second direct interrogatory you say that you or the firm of A. Y. Chick & Co., are the owners of any of the bonds referred to, state in what manner and at what time you became the owners of such bonds, and what amount you paid for the same, and whether said bonds are now in your possession.

Cross-Interrogatory 2. If in answer to the first cross-interrogatory you say the bonds therein referred to are not

in your possession, state in whose possession they are and under what circumstances they came into such possession, and how and under what terms they are held.

Cross-Interrogatory 3. If in answer to the third and fourth direct interrogatories you state that you attended any meeting of the holders of any of the bonds of the San Joaquin Electric Company held in London, state whether or not there was at such meeting a resolution offered and passed, in effect instructing Charles F. Street—should the default on such bonds occur and continue—to instruct The Mercantile Trust Company, as trustee, of the mortgage securing the same, to proceed to take steps for the foreclosure of such mortgage.

Cross-Interrogatory 4. If in answer to the foregoing cross-interrogatory you say that any such resolution was offered at any such meeting attended by you, state whether or not you voted for such resolution, and if you state that you did not vote for such resolution, then state whether or not you voted against such resolution or did not vote.

Cross-Interrogatory 5. If in answer to the fifth direct interrogatory you state that a scheme of reorganization was presented to the bondholders at any meeting at which you were present, state what such scheme or schemes were, and if the same was in writing, attach a copy thereof to your answer to this cross-interrogatory.

Cross-Interrogatory 6. Did you not at or about the time when the holders of bonds of the San Joaquin Electric Company were being invited to deposit their bonds with the American Securities Agency, Limited, state, in effect, to F. H. Burr, the secretary of said Agency, that

you were unable at that time, on account of certain pending litigation in the United States, to produce and deposit your bonds, but that as soon as said litigation should have been disposed of said bonds would in due course be deposited with said American Securities Agency, Limited, under the plan of reorganization.

Cross-Interrogatory 7. If in answer to the seventh direct interrogatory you say that you know who "the certain parties in Fresno" were, and give the names of such parties, state how you learned the names of such parties, and that they were the parties referred to.

Cross-Interrogatory 8. State if you know whether any agreement has been made with said parties in Fresno to deliver to them any stock of the proposed new corporation, and, if so, by whom and to what amount.

**Interrogatories to be Propounded to John Hart.**

Interrogatory 1. Please state your name, residence and occupation.

Interrogatory 2. Please state what business relation, if any, you have sustained to Alfred Young Chick, W. F. Lewin or the firm of A. Y. Chick & Company during the past two years.

Interrogatory 3. Please state whether Alfred Young Chick or the firm of A. Y. Chick & Company are the owners of any bonds of the defendant, San Joaquin Electric Company, and if Alfred Young Chick or the firm of A. Y. Chick & Company are the owners of any of said bonds state the number and amounts of said bonds and for how long a time Alfred Young Chick or the firm of A. Y. Chick & Company have been the holders of said bonds.

Interrogatory 4. Please state whether or not you ever attended any meeting of the bondholders of the said San Joaquin Electric Company in London, and if you did so attend when and where was it, and at whose invitation did you attend, and at whose instigation, if you know, was such meeting held. If there was more than one meeting of said bondholders, please state the different times that you attended such meetings, at whose invitation you attended and at whose instigation such meetings were held, if you know.

Interrogatory 5. If in answer to the foregoing interrogatory you have stated that you attended any meeting of the bondholders of the said San Joaquin Electric Company, please state whether or not at any such meeting you, on behalf of the firm of A. Y. Chick & Company or any member of the firm of A. Y. Chick & Company, authorized the Mercantile Trust Company to institute proceedings to foreclose the trust deed given to secure the bonds of the said San Joaquin Electric Company, and whether or not you or any member of the firm of A. Y. Chick & Company authorized or empowered the American Securities Agency, Limited, or Mr. C. F. Street to act as the agent or attorney of the said firm of A. Y. Chick & Company, or either of them, to commence such foreclosure proceedings or to request the said Mercantile Trust Company to do so.

Interrogatory 6. Were you present at any meeting of the bondholders in which a scheme of reorganization of said company was presented to the bondholders, and if so at what meeting was it, and who, if you know, presented said scheme?

Interrogatory 7. If in answer to the foregoing interrogatory you have stated that a scheme of reorganization was presented, please state whether or not the proposed plan of reorganization as set out in the bill of intervention is a copy of the proposed plan, submitted at such meeting of the bondholders.

Interrogatory 8. In the proposed plan of reorganization as set out in the bill of intervention a clause is contained therein as follows: "One hundred (\$100.00) dollars of the capital stock will be issued to certain parties in Fresno for the water rights transferred by them to the old company, providing they facilitate the foreclosure of the mortgage." Please state, if you know, who the "certain parties in Fresno" were.

Interrogatory 9. Please state any other facts in connection with any meeting of the bondholders of the said San Joaquin Electric Company, held in London or in connection with any proposed scheme of reorganization of said company or any other facts in connection therewith, of which you have knowledge, and in regard to which you have not been interrogated in any of the foregoing interrogatories.

**Cross-Interrogatories to be Propounded to John Hart.**

Cross-Interrogatory 1. State, if you know whether any agreement has been made with "certain parties in Fresno" to deliver to them any stock of the proposed new corporation, and, if so, by whom, and to what amount.

CONSULATE GENERAL OF THE UNITED STATES  
OF AMERICA, LONDON, ENGLAND.

**Deposition of Alfred Young Chick.**

Deposition of Alfred Young Chick and Isaac John Hart, witnesses sworn and examined the fifth day of November, in the year one thousand nine hundred, at the office of the Consulate General of the United States of America at London, England, situate at St. Helen's Place, Bishopsgate street, in the city of London, England, aforesaid, under and by virtue of a stipulation issued out of the Circuit Court of the United States, Ninth Circuit, Southern District of California, in a certain cause therein depending between Mercantile Trust Company, complainants, and San Joaquin Electric Company, defendants, A. Y. Chick, and W. F. Lewin, intervenors.

William Cocks, of No. 33 Chancery Lane, London, aforesaid, a stenographer and disinterested person, was appointed by the Commissioner to take down the deposition in shorthand, he being previously to the taking thereof duly sworn to take correct notes of the evidence in shorthand, and make a faithful transcript thereof into longhand:

ALFRED YOUNG CHICK, of No. 62 Old Broad street, in the city of London, England, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth, and says as follows:



(Deposition of Alfred Young Chick.)

First.—To the first interrogatory he saith: My name is Alfred Young Chick; my business residence is at No. 62 Old Broad street, in the city of London, England, and my occupation is that of dealer in foreign exchange, which business I carry on in partnership with William Flanders Lewin, under the style of A. Y. Chick and Company, at No. 62 Old Broad street, aforesaid.

Second.—To the second interrogatory he saith: Yes, my firm<sup>l</sup> of A. Y. Chick and Company are the owners of \$39,000 six per cent first mortgage bonds of the San Joaquin Electric Company, Nos. 49 and 50, 77 to 86, both numbers inclusive, 93 and 94, 101 to 107, both numbers inclusive, 233, 241, to 243, both numbers inclusive, 451 and 452, 557 and 558, 561 to 572, both numbers inclusive, 935 to 950, both numbers inclusive, and 990 to 1010, both numbers inclusive, making altogether 78 bonds of \$500 each. My firm of A. Y. Chick and Company has held those bonds since the 25th February, 1898.

Third.—To the third interrogatory he saith: I attended one meeting and one meeting only of the bondholders of the said San Joaquin Electric Company by the invitation of the American Securities Agency, Limited, which was held at the offices of the said American Securities Agency, Limited, which were then at 45 Queen Victoria street, in the city of London, aforesaid. I cannot remember the date of this meeting, but I know it was subsequent to the 25th February, 1898, and speaking from memory, I should think this meeting was held

(Deposition of Alfred Young Chick.)

during the course of the year 1899. It is not my custom to keep a record of such a meeting, but I know that I attended that meeting at the invitation of the American Securities Agency, Limited, of Queen Victoria street, in the city of London. I have no personal knowledge of any other meeting of the said bondholders having been held. I certainly only attended one meeting. At that meeting, which was the only meeting at which I attended I stated publicly that I attended simply as a listener and intended to take no part in the proceedings, and I further stated that I declined to vote, and, as a matter of fact, I did not vote.

Fourth.—To the fourth interrogatory he saith: I answer all the matters propounded to me in this interrogatory absolutely in the negative.

Fifth.—To the fifth interrogatory he saith: At the only meeting which I attended, and to which I have alluded in my reply to the 3d interrogatory, there was no definite scheme of reorganization submitted. A scheme of reorganization was discussed generally, but it was in too crude a form for me to form any opinion in regard thereto.

Sixth.—To the sixth interrogatory he saith: I stated in my reply to the fifth interrogatory that no definite scheme of reorganization was submitted to me at the only meeting at which I attended, and I further say that I have never seen or read the proposed plan of reorganization as set forth, as alleged, in the bill of interven-

(Deposition of Alfred Young Chick.)

tion, and a copy of it has never been sent to me or to my firm.

Seventh.—To the seventh interrogatory he saith: I believe the “certain parties in Fresno” were Mr. Seymour and Mr. Eastwood.

Eighth.—To the eighth interrogatory he saith: I have nothing further to add to my previous replies.

#### Cross-Interrogatories.

First X.—To the first cross-interrogatory he saith: My firm became the owners of such bonds on the 25th February, 1898, and they received them as part collateral security attached to a bill of exchange for \$44,000 drawn by the Municipal Investment Company, of Chicago, in London on the Municipal Investment of Chicago at Chicago, and which bill of exchange has been dishonored.

Second X.—To the second cross-interrogatory he saith: The said bonds are now in the possession of my firm. I say they are in the possession of my firm as part collateral security as stated by me in my reply to cross-interrogatory No. 1.

Third X.—To the third cross-interrogatory he saith: At the only meeting of the bondholders which I attended, and to which I have referred in my answer to the third direct interrogatory, I have no recollection of any such resolution being offered and passed.

Fourth X.—To the fourth cross-interrogatory he saith: As I have already testified in my reply to the

(Deposition<sup>1</sup> of Alfred Young Chick.)

third direct interrogatory, I disclaimed all participation in the proceedings at such meeting, and stated that I only came there as a listener, and I did not vote.

Fifth X.—To the fifth cross-interrogatory he saith. As I have already deposed in my reply to the fifth direct interrogatory, no definite scheme of reorganization was presented to the bondholders at the only meeting at which I was present, and therefore, I am unable to attach a copy of such scheme to my deposition.

Sixth X.—To the sixth cross-interrogatory he saith: My reply to this cross-interrogatory is entirely in the negative.

Seventh X.—To the seventh cross-interrogatory he saith: I believe I heard of these names from some of the officials of the American Securities Agency, Limited, in discussing with them the matter in a friendly and unofficial way.

Eighth X.—To the eighth cross-interrogatory he saith: No, I do not know.

A. Y. CHICK.

Examination taken; reduced to writing; and by the witness subscribed and sworn to this fifth day of November, 1900, before me.

[Seal]

R. WESTCUTT,  
Commissioner.

### Deposition of Isaac John Hart.

ISAAC JOHN HART (described in the stipulation as "John Hart"), of No. 22 Great Winchester street, in the city of London, England, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says, as follows:

First.—To the first interrogatory he saith: My full name is Isaac John Hart (described in the stipulation as "John Hart"); my business residence is at No. 22 Great Winchester street, in the city of London, England, and I am by occupation a solicitor of the Supreme Court of Judicature in England.

Second.—To the second interrogatory he saith: I have acted as their solicitor for considerably more than two years last past.

Third.—To the third interrogatory he saith: In my professional capacity as legal adviser to the firm of A. Y. Chick and Company, I know that the said firm of A. Y. Chick and Company are the owners of certain bonds of the said San Joaquin Electric Company of the face value of \$39,000, numbered 49 and 50, 77 to 86, both numbers inclusive, 93 and 94, 101 to 107, both numbers inclusive, 233, 241 to 243, both numbers inclusive, 451 and 452, 557 and 558, 561 to 572, both numbers inclusive, 935 to 950, both numbers inclusive, and 990 to 1010, both numbers inclusive, making altogether 78 bonds of \$500 each. So far as I know in my professional capacity, the said firm of A. Y. Chick and Company have held the said bonds since the later part of February, 1898.

(Deposition of Isaac John Hart.)

Fourth.—To the fourth interrogatory he saith: I attended with Mr. Chick in my capacity as his legal adviser at what purported to be a meeting of the bondholders of the San Joaquin Electric Company, held at the then offices of the American Securities Agency, Limited, No. 45 Queen Victoria street, in the city of London, about the end of March, 1899, at the instigation, as I was informed, of the said American Securities Agency, Limited. That is the only meeting that I attended, and I only attended that meeting at the request of Mr. A. Y. Chick, and in my capacity, as I have before stated, as his legal adviser.

Fifth.—To the fifth interrogatory he saith: To the whole of this fifth interrogatory I reply in the negative.

Sixth.—To the sixth interrogatory he saith: No definite scheme of reorganization was presented at the only meeting that I attended, and to which I have referred in my reply to the fourth interrogatory, and I further say that the only thing that took place at that meeting was an informal discussion as to some scheme of reorganization, in which discussion my client, Mr. A. Y. Chick, took no part. My client, Mr. A. Y. Chick, was there only as a listener, and took no part in the proceedings, and I was there simply to watch on his behalf.

Seventh.—To the seventh interrogatory, he saith: I have already testified in my reply to the sixth interrogatory that no definite scheme of reorganization was laid before the meeting.

(Deposition of Isaac John Hart.)

Eighth.—To the eighth interrogatory he saith: I have no personal knowledge on this matter.

Ninth.—To the ninth interrogatory he saith: I do not know of any other facts.

#### Cross-Interrogatories.

First X.—To the first cross-interrogatory he saith: No, I do not know.

#### ISAAC JOHN HART.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this fifth day of November, 1900, before me.

[Seal]

R. WESTCUTT,  
Commissioner.

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND,  
CITY OF LONDON, ENGLAND.

#### Commissioner's Certificate.

I, Richard Westacott, Vice and Deputy Consul General of the United States of America, at London, England, the Commissioner named in said stipulation, do certify that the witnesses, Alfred Young Chick and Isaac John Hart (described in the stipulation as "John Hart"), appeared before me at the office of the Consulate General of the United States of America, at London, England, situated at St. Helen's Place, Bishopsgate street, in the city of London, aforesaid, and after being respectively duly sworn, their evidence respectively was

taken down in shorthand by William Cocks, a stenographer and disinterested person employed by me for that purpose, and afterwards by him reduced to longhand, he having been previously to the taking thereof duly sworn to take correct notes of the evidence, and to make a faithful transcript thereof into longhand, and the said evidence so taken down and reduced to longhand was read over and corrected by the said witnesses respectively, after which they respectively subscribed the same in my presence on the fifth day of November, 1900, at the office of the Consulate-General at London, England, aforesaid, and that I have personal knowledge of the said witnesses respectively.

In witness whereof I have hereunto set my hand and affixed my official seal at London, England, this sixth day of November, 1900.

[Seal]

R. WESTACOTT,  
Commissioner.

[Endorsed]: 916. Opened and filed November 26, 1900. Wm. M. Van Dyke, Clerk.

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At a stated term, to wit, the July term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Monday, the eighth day of October, in the year of our Lord one thousand nine hundred. Present: The Honorable OLIN WELLBORN, District Judge.



MERCANTILE TRUST COMPANY,	}	Complainant,	No. 916.
as Trustee,			
		vs.	
SAN JOAQUIN ELECTRIC COM-	}	Defendant.	
PANY,			

**Order Appointing Special Examiner.**

On motion of John D. Works, Esq., of counsel for Intervenor Alfred Young Chick et al., and it appearing that all parties consent thereto, it is ordered that John W. Gearhart, Esq., be, and he hereby is, appointed a Special Examiner of this court, to take the testimony in this cause in the matter of the intervention of Alfred Young Chick et al., and to report said testimony when so taken to this court.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court, October 8th, 1900, in the cause entitled Mercantile Trust Company, as Trustee, Complainant, vs. San Joaquin Electric Company, Defendant, No. 916, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court this 8th day of October, A. D. 1900.

[Seal]

WM. M. VAN DYKE,

Clerk.

[10c. Int. Rev. Stamp Canceled]

*In the Circuit Court of the United States of America, Ninth  
Judicial Circuit, Southern District of California.*

MERCANTILE TRUST COMPANY,  
as Trustee,

Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

And ALFRED YOUNG CHICK et al.,

Intervenors.

No. 916.

### Report of Special Examiner.

Be it remembered, that on the 2d day of January, 1901, and on the several days thereafter to which the examination was regularly adjourned, as hereinafter set forth, and at the times mutually agreed upon by the parties in said cause, at my office in the courthouse of the county of Fresno, and at the office of the defendant herein, in the city of Fresno, county of Fresno, and State of California, in said District, before me, John W. Gearhart, who was on motion of John D. Works, Esq., of counsel for intervenors, and by consent of counsel for complainant and defendant, appointed Special Examiner by said Circuit Court to take testimony herein, and who duly qualified by taking oath as such Special Examiner before L. L. Cory, Esq., notary public in and for

(Testimony of W. R. Price.)

said county of Fresno, personally appeared the several witnesses whose names are hereinafter set forth, who were produced and examined on behalf of the respective parties to the above-entitled cause.

Messrs. Alexander & Green and Charles Monroe, per L. L. Cory, their representative, appeared as solicitors for the complainant, and John D. Works and George E. Church appeared as solicitors for the intervenors, no one appearing for the defendant.

The following is a correct report of the proceedings:

W. R. PRICE, being called as a witness for intervenors, and being duly sworn by the Special Examiner, all objections as to the competency of the witness having been waived by the complainant herein, now testifies as follows:

**Direct Examination.**

By Mr. CHURCH.—Now, just look at these papers (handing papers to witness). State what they are and how you made them up.

A. Well, this is a statement of the earnings and expenses of the Fresno Water Company for the years 1897, 1898, 1899. The first are the receipts for 1897, Then follows the operating expenses. Under that head, fuel, salaries, sundries, power and interest, with interest on bonds. Here we have the evidence obtained from the books of the company, furnished by the officers at their office; and the same for 1898 and 1899. The headings are the same, substantially the same, and I think exactly the same.

(Testimony of W. R. Price.)

Q. Now, as to the correctness of that, I suppose you can swear to it?

A. As to the correctness, I am willing to swear that the statement is correct, as shown by the books of the company.

(Paper referred to by witness is marked Intervenors' Exhibit "A" and appended hereto.)

The WITNESS.—Now, this is Statement of Earnings and Expenses of San Joaquin Electric Company for the years 1897, 1898, and 1899. The first portion of the statement shows receipts from consumers as so much. Under the head of Operating Expenses we have salaries, supplies, expense, repairs, power-house expenses, sub-station and interest, and the difference would be the net earnings. The bonded interest being a fixed amount, I have left it out of this statement, as I explained to you.

Mr. CHURCH.—Just state what you left out.

The WITNESS.—The memorandum I think you have, Mr. Church.

Q. Can you state without your memorandum?

A. I think it is \$31,500.

Q. What is that item?

A. That represents the annual interest on bonds.

Mr. CORY.—Q. You have left that out of this statement?

A. I have left that out of this statement. I have simply aimed to show receipts and operating expense. That is what the statement shows; and I had a memo-

(Testimony of W. R. Price.)

randum accompanying this explaining that: I omitted from this statement the annual interest on the bonds, which I think amounts to about \$31,500. At any rate, the statement, as I have it shows just what the items of expense are. And for 1898 the receipts are shown and then the operating expenses.

Mr. CHURCH.—Q. Is that what you have reference to (exhibiting paper to witness)?

A. Yes. My recollection was correct. It was \$31,500 a year. This memorandum accompanied the statement to Mr. Church. (Reads:) “In the above statement I have not included in the expenses the item of bond interest, which is a fixed charge and amounts to \$31,500 per year.”

Mr. CORY.—Q. Does that apply to each year?

A. That applies to each year.

Mr. CHURCH.—Q. For how long a time?

A. 1897, 1898 and 1899, I cover by this statement.

Q. For each year, is that correct?

A. I think so.

Q. January 1st, 1899, was the time when the first interest became due?

Mr. CORY.—The interest became due right along. In 1899 they defaulted.

Mr. CHURCH.—Q. They paid up to that time? Does your statement show the interest up to that time had been paid?

(Testimony of W. R. Price.)

A It does not show anything about that. There has not been enough money collected in the years 1897, 1898 and 1899 to pay it.

Mr. CORY.—The running expenses and fixed charges?

A. The running expenses and fixed charges of interest.

Mr. CHURCH.—Q. This statement shows the exact state of affairs excluding that? A. Yes.

Mr. CORY.—Q. Shows the receipts and disbursements? A. Receipts and disbursements.

Mr. CHURCH.—Q. You have made no charge or credit with reference to the fixed interest?

A. None whatever.

Mr. CORY.—Q. Your statement is that the fixed interest charge is \$31,500, and that there was not enough received—the receipts of the company were insufficient to pay the running expenses and that fixed charge?

A. Exactly. The receipts in 1897—net earnings, not including, of course, the charge of \$31,500 for interest—the net earnings were \$10,878.80. For 1898 the net earnings were \$14,173.49. For 1899 they were \$29,957.28.

Mr. CHURCH.—Yes, I understand. Now we will have that marked Intervenors' Exhibit "B." (Paper marked Intervenors' Exhibit "B" and appended hereto.)

(Testimony of W. R. Price.)

Mr. CHURCH.—Take those others.

A. This is "Statement of Resources and Liabilities of San Joaquin Electric Company, December 31, 1899."

Mr. CORY.—What you call a balance sheet?

A. Yes; it is what we call a balance sheet.

Mr. CHURCH.—Well, that is sufficient, as far as that is concerned. That shows what it is.

Mr. CORY.—Q. Does that show any fixed charge for interest, and things of that kind?

A. This shows the exact indebtedness of the company at this particular time, on December 31, 1899. It shows that the profit and loss account was overdrawn at that time nearly \$10,000, and that the interest account—they charge up to bond interest \$36,750. There was nothing in the interest account to pay that, but it was charged up to the account, and represents indebtedness of interest account.

Q. You may state from looking at that what was the difference between the assets and liabilities, how much that amounts to.

Mr. CHURCH.—Doesn't that show it right there?

Mr. CORY.—Q. In other words, did the books show that at that time they had sufficient assets on hand to pay the liabilities, including the interest?

A. Among the assets, of course, are items that are put down there, and as to the correctness of those items in representing the value of the property, I couldn't say.

Mr. CORY.—They are taken from the books.

(Testimony of W. R. Price.)

Mr. CHURCH.—Yes, what the books show and what your statement shows.

The WITNESS,—Well, now, your question, I think— if I understand it rightly—would mean this, that your profit and loss, and interest accounts are overdrawn there—

Mr. CORY.—Q. Did it show enough cash on hand to pay their current expenses and interest on bonded indebtedness at that time?

A. Well, the cash on hand—

Q. Bills receivable, in other words?

A. Cash on hand was a very small item, in fact would not cut any figure. What you want to get at is the earnings?

Q. The bills receivable, convertible into cash, practically?

A. Well, that would be a different matter, I think, Mr. Cory, because there are a great many of these items considered as assets that it would be hard for me to say whether they are convertible into cash or not, whether they are good assets. They would amount to \$4,272.44, due from sundry individuals. It is probable some are good, and it is quite probable some are not good. Assuming that all of those were good, you have in that item alone, a little over \$4,000. You have, due from First National Bank—that is cash on hand—you have, in round numbers, \$250. You have another item in the resources which is carried under property account, and it represents different items, perhaps represents horses and



(Testimony of W. R. Price.)

wagons, or things of that kind, and that you use in your business.

Q. I want now to simply identify these papers and have them go in. As to the examination on the papers, we will take that up later. I understand you the paper in your hands shows resources and liabilities of the company? A. Yes, sir.

Q. At the end of the year 1899? A. 1899.

Q. Now, what are the resources as shown there? It is stated as a whole, isn't it? A. Yes, sir.

Q. And the items constituting the resources are also shown there? A. Yes, sir.

Q. And the liabilities. Now these items constituting the resources, you have taken from the books?

A. They have been taken from the books.

Q. Did you find on the books those items as a whole just as you have them there? For instance, you have here "Permanent Improvements, \$800,000." Now did you find on the books \$800,000 as the amount, exactly, of the permanent improvements of the company?

A. Yes; that is an amount carried on the books.

Q. You don't find that as one item, but it is permanent improvements, \$800,000?

A. My recollection is that that amount is being carried forward from year to year, and probably was originally written in from different amounts, possibly previous to the time of those statements.

Q. That is what you found there?

A. That is what I found; yes.

(Testimony of W. R. Price.)

Q. Here is another item: "Construction, \$363,990.-06." Is that item you have here made up of sundry items from the books, or is it one item on the book?

A. I think that has been an active account during the period of those statements.

Q. That is, during the three years?

A. During the three years. Yes, sir. The account was opened before that, but what it stood at, at the beginning of this statement, 1897—

Q. (Intg.) So far as the books are concerned, they show various items, and show the item under the head of liabilities just as you have them here?

A. Yes; resources and liabilities. (Paper marked Intervenors' Exhibit "C" and appended hereto.)

Q. Now, what is that other?

A. Well, this is statement of resources and liabilities of the Fresno Water Company, of the same date, that is, December 31, 1899.

Q. Well, then, the same thing will be said of that as you said of the other?

A. Yes. This of course is not so lengthy a statement.

Mr. CORY.—What is the purpose of showing anything with reference to the Fresno Water Company?

Mr. PRICE.—We understand that is a part of the resources of the Electric Company.

Mr. CHURCH.—I understand that is a part of the resources. I understand they have always regarded it as

(Testimony of W. R. Price.)

such. Now, Mr. Cory, as to any particular examination you want to make of Mr. Price, do you want to make it now?

Mr. CORY.—I am not prepared. I have not seen these statements. From your examination did you find that the company had sufficient funds on hand to pay their indebtedness that became due on the 1st of January, thereabouts, 1900?

A. There was not sufficient.

Q. There was not? A. No.

Q. Do you know about how much was the deficit, in round numbers?

Mr. CHURCH.—Answer the question as directly as you can.

A. I will, but I want to have a definite understanding about it. Of course, it has been assumed that the receipts and expenses, or that the profits of one would apply to the indebtedness of the other—

Q. What do you mean by “profits of one”?

A. Of the Fresno Water Company, would apply to the indebtedness of the Electric Company.

Mr. CORY.—I am asking you what your statement shows with reference to the Electric Company, without reference to your examination as to the Fresno Water Company, whether they had sufficient funds on hand to pay their obligations as they became due at the time of your examination, and you state they had not. Now I want to know if you can state generally about what

(Testimony of W. R. Price.)

the difference was, in other words, how much they owed more than they had funds and assets on hand to pay at that time?

A. My recollection now, without looking up the statement again, is \$46,000, in round numbers.

Mr. CORY.—That is all at present.

Mr. CHURCH.—Q. Now, I might ask you what was done with the funds or resources that came in? You don't know, do you, except that they are paid out for certain things that you have specified?

A. They are represented under those heads.

Q. That is all you know about it?

A. Yes, sir.

Mr. CORY.—Q. You are testifying as to what the books show?

A. Yes, sir, exactly, what the books show. I didn't go behind that.

Mr. CORY.—Yes; I understand that.

(Papers referred to by witness as Statement of Resources and Liabilities of Fresno Water Company is marked Intervenors' Exhibit "D" and is hereto appended.)

Mr. CHURCH.—Perhaps you had better take those papers and look at them as soon as you can, and not keep Mr. Price now.

Mr. CORY.—Yes. It may be I don't care to examine him further. Maybe they are sufficiently explicit in themselves, and will not require any further examina-

(Testimony of J. J. Seymour.)

tion. I will submit them to Mr. Collier, and let him look over them, and if he has anything to suggest I may ask some questions, but for the present I have no questions.

J. J. SEYMOUR, being called as a witness for intervenors, and being duly sworn by the Special Examiner, now testifies as follows:

Direct Examination.

(By Mr. CHURCH.)

Q. What is your name?

A. My name is John J. Seymour.

Q. What relation do you occupy to this defendant, the San Joaquin Electric Company, Mr. Seymour?

A. Well, I am both president of the San Joaquin Electric Company and—

Mr. CORY.—That is what he asked you, just about the Electric Company.

Mr. CHURCH.—Q. You are, you say, president of the Company? A. Yes, also receiver.

Q. And you are at present receiver of the company, appointed in this action?

A. Yes, sir.

Q. By whom were you appointed receiver?

A. Judge Wellborn.

Q. At whose motion or request?

A. At the request of Messrs. Alexander & Green, I believe, the attorneys for the Mercantile Trust Company.

(Testimony of J. J. Seymour.)

Q. The complainant in this action?

A. Yes, sir.

Q. How long had you been president of the Electric Company?

A. Since its formation, about 1895, I think it was.

Q. Do you hold any official position relative to the water company, also, the Fresno Water Company?

A. Yes, sir.

Q. What is that?

A. I am the president of the Fresno Water Company.

Q. Well, do you know as a matter of fact, Mr. Seymour, whether the property of the water company is included in the deed of trust or mortgage deed given by the San Joaquin Electric Company, the defendant here, to secure the bonds or the indebtedness for which this suit was brought?

(It is here stipulated and agreed that either party, at the time of the reading of the depositions in open court, may thereupon make any and all objections or motions concerning the questions asked or the testimony introduced, except as to the form of the interrogatory.)

A. The stock of the Fresno Water Company is given in that.

Q. Is pledged with the other?

A. It is pledged with the other.

Q. As a matter of fact, had the Electric Company

(Testimony of J. J. Seymour.)

acquired all the stock of the Fresno Water Company at that time?

A. It has, except sufficient for voting purposes of the local directors.

Q. Merely a nominal amount?

A. Nominal holdings.

Q. Now, of course you have not your books and Mr. Collier is not here. He is the secretary, isn't he?

A. Yes.

Q. He keeps the books of both companies?

A. Yes, sir.

Q. Do you keep the accounts of the water company separately from the accounts of the electric company?

A. Entirely separately.

Q. Now, Mr. Seymour, this item of permanent improvements of \$800,000, what does that include, as far as your knowledge goes?

A. I think that includes the bonds outstanding. No. That is stock, that amount, \$800,000, the par value of the stock of the San Joaquin Electric Company. It was organized with a capitalization of \$800,000.

Q. So this item of permanent improvements, of \$800,000, is simply the par value of the stock?

A. Yes, sir.

Q. It don't represent the value of the property of the company, then?           A. No.

Q. Do you know what the value of the property of the company, the plant, is?

A. No; but the trial balance will show.

(Testimony of J. J. Seymour.)

Q. But do you know the actual value now, or what it was in 1899?      A. The actual value?

Q. Yes. You don't know anything about that, do you?      A. I don't fully understand?

Mr. CORY.—About what the actual market value was at that time. Of course, it would be simply an estimate.

A. Oh, I couldn't answer that question.

Mr. CHURCH.—Q. Now, in addition to that item of \$800,000, there is the item here of construction, \$363,990. What does that represent?

A. That represents, as I remember, money paid out for plant and construction.

Q. Everything belonging to the company, the property of the company?

A. Actual money paid out, yes.

Q. Well, then, that represents the actual cost of the property that you have acquired—that the electric company has acquired, does it?

A. Excepting the stock of the water company.

Q. Well, the stock of the water company is a separate item here?      A. Yes, sir.

Q. Then this \$363,990.06 is what the property of the electric company has cost in money?

A. In money, yes.

Q. How many of the bonds have you sold?

A. I think there are now out \$525,000.

Q. What was the amount realized from the sale of those bonds?



(Testimony of J. J. Seymour.)

A. We sold the bonds at eighty per cent of the par value, with the exception of \$165,000 in bonds which the trust deed mentions were paid for the stock of the water company, that was put in the hands of The Mercantile Trust Company.

Q. The \$165,000 that you say was paid for the Fresno Water Company's stock and put in the hands of the Trust Company. Who were the holders of the Fresno Water Company's stock when you acquired it?

A. Various people. I think Mr. Gray owns some yet. I own a little.

Q. Well, it is not necessary to specify who the parties were.

A. Different parties.

Q. You say this \$165,000 of the bonds of the electric company were placed in the hands of the complainant here, The Mercantile Trust Company?

A. No. The entire stock of the Fresno Water Company was placed in the hands of The Mercantile Trust Company after it was purchased by the \$165,000 in bonds of the San Joaquin Electric Company.

Q. Then the bonds of the Electric Company, \$165,000 worth, we will say, were given to the owners of that stock?

A. Yes, sir.

Q. Various owners?

A. Various owners.

Q. And the stock passed over to The Mercantile Trust Company and they hold it in trust the same as the other, of course. Now was it exactly \$165,000 of the bonds of the Electric Company, par value?

A. Yes.

(Testimony of J. J. Seymour.)

Q. And is that in addition to the other bonds that were issued or a part of the bonds issued?

A. That is a part of the \$525,000 bonds issued.

Q. Then you take, do you, to get this \$363,900 value of the construction, you deduct, first, the \$165,000 from the bonds issued by the Electric Company, and the balance you sold at 80 per cent?

A. Yes. And in addition to that there is probably some of the revenues of the company that goes to make that. I don't know. I can't strike the balance in my mind now, but it is very probable that it will exceed the eighty per cent.

Q. What I want you to get at, Mr. Seymour, if I can, is, did that consume the whole of what you realized from the sale of that \$525,000 or \$550,000 of bonds, the \$165,000 and this \$363,990, or is part of this \$363,990 a part of the money that the company has earned since?

A. I couldn't answer that question without making some calculations.

Q. From the books?

A. Well, yes, from the books, and from knowing what we realized—

Q. What I want to get at is simply to find out how much money the company has realized, actual money, and what has actually been done with that money. Now will you make a statement of that, so we can get it, in some form?

A. Well, as I told you, we sold the bonds at eighty dollars on the hundred.

(Testimony of J. J. Seymour.)

Q. But you can't tell that exactly. Will you make a statement, Mr. Seymour—so that we need not keep you here—will you make a statement showing the exact amount of money that you realized from the sale of the bonds, and also the amount of money the company has earned, and then exactly how much of it has been put into the property, and what property it is that the company has acquired? You understand what I want?

A. Well, as I stated before, there was five hundred and—

Q. (Intg.) Well, Mr. Seymour, you can very readily get that from your books, and if you will make up a brief statement, so we can put it in the record, it would be what I would rather have. What you would give us now would be from memory. I may ask you a question or two further. I find among the resources the Hanford Extension, \$34,865.26. In other words, the Electric Company has acquired the Hanford Extension, so called.

A. It constructed the Hanford Extension.

Q. It constructed it? A. Yes, sir.

Q. Didn't Lacy & Company have something to do with that matter?

A. They advanced the money or the major part of the money, and we were to allow them to pay that out by the current they used.

Mr. CORY.—They were to pay so much for the current used and instead of paying it to the Electric Company they advanced the money and it was applied from month

(Testimony of J. J. Seymour.)

to month on this indebtedness and they were to own this property until it was fully paid for and then it was to be turned over to the company?      A. Yes, sir.

Mr. CHURCH.—Q. And you carry it on the books as a part of the resources of the company, that amount, \$34,865, or whatever it is, for the Hanford Extension?

A. I couldn't tell you, without an examination of the books.

Q. Can you tell what the earnings of that Hanford Extension are?

A. They have been \$600 a month since it was constructed, that is, the gross earnings have been. That would be \$7,200 a year.

Q. You don't know what the net earnings amount to?

A. Well, as far as we are concerned, there are no net earnings now, because we get no money from it. They first pay the interest charge on the money they advanced and the remainder is applied on the indebtedness, thus reducing it from month to month.

Q. I know, but isn't it operated by you as receiver now?      A. Yes.

Q. The Hanford Extension?      A. Yes.

Q. Don't you, then, as receiver, pay the expenses of the operation of the line, and haven't you been doing so?

A. There are no expenses of the operation of the line.

Q. If there are no expenses, would that not be net earnings?

(Testimony of J. J. Seymour.)

A. As far as our company is concerned, everything over and above the interest on the money is applied on the principal, thus reducing it from month to month.

Mr. CORY.—It is really net, because part of it is applied on the principal and a portion of it on the interest?

A. We can't use it except for that one purpose.

Mr. CHURCH.—Q. But there are some expenses in operating that portion of the line?

A. Well, it is simply a pole line.

Q. Then there are actually no expenses?

Mr. CORY.—Practically none. Of course, if the pole line breaks, or something of that kind, they will send a man out to make repairs.

Mr. CHURCH.—Q. You have to send a man out?

A. We have a man over the entire line, employed by the month.

Q. But you don't deduct—that when you pay him you don't deduct that from this—

A. (Intg.) We don't, it is so little.

Q. Practically Lacy & Co., who built that, are receiving \$600 per month right along?

Mr. CORY.—They are paying \$600 a month.

Mr. CHURCH.—But it is being applied on their indebtedness?

A. Yes, under a contract made with them. At the present time they are getting something in the neighborhood of—we are repaying the principal at the rate of, I

(Testimony of J. J. Seymour.)

think, somewhere in the neighborhood of \$450 a month. The other \$150 is interest charge.

Q. But the whole \$600 goes to either principal or interest. Was the capital stock of the company all taken, all really issued? A. Yes.

Q. And \$790,000 of it?

A. Eight hundred thousand dollars.

Q. Put down here in this statement as \$790,000. Where is that other \$10,000? Does the company still own that?

A. That has never been issued, that \$10,000. Oh, yes, there was some stock returned to us.

Q. Well, it is practically in the hands of the company and not issued?

A. Yes. It was issued in the first place. Oh, yes, I remember. I had forgotten it momentarily.

Q. Was that taken at par?

A. It was taken as a bad debt.

Q. Seven hundred and ninety thousand dollars?

A. No, the \$10,000. The other was given in payment of water rights, in the inception of the scheme.

Q. This statement you are to make will show exactly what has been done with this money, how much was realized and what was done with it? A. Yes, sir.

Q. In other words, what property you got for it?

A. Yes, sir.

Q. And what you paid for it. That is what I want to get.

(Testimony of J. J. Seymour.)

Mr. CORY.—The company didn't receive a dollar in cash, did it, for its capital stock? A. No.

Mr. CHURCH.—Q. Are the operating expenses, Mr. Seymour, the same as they have been? Have they been for this last year the same as in past years, since you have been acting as receiver?

A. Practically the same. Of course there are changes from time to time.

Q. Is the salary list the same as it was during those years practically?

A. Practically the same. There may have been an increase, something of that sort, in individual salary.

Q. The books for this year, 1900, have been balanced so that we can get at the amount?

A. I don't think the balance is struck yet. You mean for 1900?

Mr. CORY.—Yes, for the last year. There have been statements rendered every month, you know, Mr. Church.

Mr. CHURCH.—Yes, I understand but I wanted to get at it—

A. Well, it takes several days—both companies—it takes several days to strike a balance and get it out in form.

Q. Have you been increasing the works of the company during the last year, Mr. Seymour?

A. Yes, somewhat, under the direction of the Judge.

Q. How much have you expended in that way during this year?

(Testimony of J. J. Seymour.)

A. I have not got the figures with me. The Judge allowed us to issue receiver's certificates and I think we have withdrawn something like \$17,000 of this and sold them at par.

Q. Have you been adding to the company's works this year?

A. My receivership began in September, fifteen months ago, sixteen months ago—

Q. September, 1899.

A. September, 1899, and since then the Court allowed us to sell receiver's certificates and purchase some transformers, \$6,000 worth; and then we have expended somewhere in the neighborhood of \$15,000 or \$18,000 for reservoir site and in the partial construction of the dam and reservoir.

Q. Your books, of course, will show just what your expenditure has been?      A. Yes, sir.

The further taking of testimony herein was here continued until 2 o'clock to-morrow, January 3, 1901.

Office of San Joaquin Electric Co.

Fresno, January 3d, 1901.

J. M. COLLIER, being called as a witness for intervenors, and being duly sworn by the Special Examiner, now testifies as follows:

Mr. CORY.—In looking over this statement of Mr. Price, we discover that he has left out the bettement account entirely. That is a very important account, all



(Testimony of J. M. Collier.)

the extension of the lines and expenses of one kind and another, amounting in one year to \$15,000 or \$16,000, and that was left out entirely, apparently, in his account. Mr. Collier spoke to me of it. It don't seem to be taken into account at all.

Mr. CHURCH.—It might be well to ask him something about that.

Q. Mr. Collier, you are secretary of this San Joaquin Electric Company?      A. Yes, sir.

Q. How long have you been such?

A. Since its organization.

Q. And you are and have been secretary, I suppose, since the receiver was appointed, the same as before?

A. Yes, sir.

Q. Have you a copy, Mr. Collier, of a statement of the affairs of the company made by you and Mr. Seymour, signed by you and Mr. Seymour, some time about January, 1899, and addressed to or sent to the Trust Company, the complainant, or to the Municipal Investment Company, either one?

A. We have no copy, no, sir, and I don't remember sending any statement except to Mr. Coffin.

Q. You sent a statement. The statement was sent to Mr. Coffin?      A. Yes, sir.

Q. Have you got a copy of that?      A. No, sir.

Q. Have you any memoranda anywhere of that

A. I couldn't tell without looking over the papers. I don't think so though.

(Testimony of J. M. Collier.)

Q. I wish, if you don't know for certain, that you would look and see if you have that memoranda or could supply it, not now. You keep all the records, of course, of the company?      A. Yes, sir.

Q. Have you the demand, or a demand made by the Trust Company, the complainant herein, upon the Electric Company to make payment, before this suit was commenced—payment on account of the interest?

A. A demand of the Mercantile Trust Company, I suppose?

Q. That is the complainant, you know?

A. I don't remember just now, Mr. Church. I can't answer that question, Mr. Church, except to say there is usually a notice served that interest is due but I can't recall that they served such a notice. I know it is customary.

Q. You then don't recollect receiving any notice of that kind?

A. Well, I couldn't say until I look through the files of the letters, etc.

Q. It wasn't turned over to you, a notice of that kind?

A. No, sir.

Q. And you have none then?      A. No, sir.

Q. Now, Mr. Collier, you have kept the books of the company. You know or can find out from those books just what money has been received and what money paid out?      A. Yes, sir.

Q. Since the organization of the company. Have you

(Testimony of J. M. Collier.)

got a statement drawn up, or would you have to look at the books to see?

A. Well, I have a statement from month to month.

Q. You have, continuous from the beginning?

A. Continuous from month to month, of the disbursements and receipts.

Q. From the beginning?

A. From the beginning, up to date. I have the statement before me.

Q. Now, perhaps, if you will turn to the month of December, 1898—

A. Yes, sir.

Q. Those statements are on your books?

A. Yes, sir, I have it in the book. (Book handed to Mr. Church.) December, 1898. That is the disbursements. Those are the footings of the ledger.

Q. When did you make that?

A. I made that the 1st of December, 1898—1st of January. It was for the month of December, but it was not compiled until the 1st of January.

Q. It is meant to be for the month of December?

A. December.

Q. Are these figures the same as Mr. Price had?

A. Yes. His is a statement of that—a summary of that.

Q. Did he get his figures from this book?

A. Yes. He has access to this book. He got it from this and the original both. That is the disbursements in detail for that month, and the receipts in detail.

Q. Well, now, Mr. Collier, how much does that show

(Testimony of J. M. Collier.)

—what amount of money does it show that the Electric Company had on hand or received during that month of December, 1898?

A. Amount on hand the 1st of December was \$607.13.

Q. How much did it receive in addition?

A. It received during the month \$3,713.23 and a few other collections—1, 2, 50.

Q. Is that the total receipts?

A. That is the total receipts for that month. That is for current and sundries sold, lamps, etc., during the thirty days.

Q. What were the receipts for each of the months preceding during that year? Were they the same or about the same?

A. Well, they varied, of course; about the same, though. They are given in detail.

Q. If you can, get a sum total for each month.

A. Well, for November it was \$5,521.97.

Q. And for October?

A. I suppose you want the actual receipts?

Q. Yes. A. For October, \$1,285.36.

Q. One thousand two hundred and eighty-five dollars?

A. Yes, sir.

Q. And how many cents?

A. Thirty-six cents.

Q. Do you know the reason of the falling off there?

A. This was in '98. We run only part of that month, I think, to the best of my memory just now.

(Testimony of J. M. Collier.)

Mr. CORY.—Shortage of water, I suppose?

A. Shortage of water.

Mr. CHURCH.—Q. Anyway, that represents the total receipts for that month?      A. Yes, sir.

Q. That is, the total receipts, and not the receipts after deducting anything?      A. That is gross.

Q. That is gross receipts for that month?

A. Yes, sir.

Q. Go on. September?

A. One thousand dollars and eighty-eight cents.

Q. One thousand dollars and eighty-eight cents?

A. Yes, sir.

Q. That is the total receipts for September?

A. Yes, sir.

Q. Go on.

A. Two thousand seven hundred and fifty-three dollars and twelve cents for August. Now the next month, July, \$3,531.44; \$3,261.32 for June; \$2,949.94 for May.

Q. What month was that?

A. May; \$3,682.47 for April; \$3,812.03 for March, and for February, \$3,741.24. \$3,911.22 for January.

Q. That completes the year. Now, will you let me see the disbursements right there?

A. Commences on the right side with the disbursements.

Q. Now, Mr. Collier this is a trial balance that you have put here. Are these amounts of salary continued about the same right along?

(Testimony of J. M. Collier.)

A. About the same. I might say they were more in the beginning. There was a good deal of that that was in the nature of construction.

Mr. CORY.—He is talking about the salaries.

A. Those salaries, the same.

Mr. CHURCH.—I notice in that year, in January, 1898, the amount of \$800 paid to the Fresno Water Company. What was that for?

A. Paid to the water company? I suppose that was to reimburse the money we borrowed.

Q. That was simply paying up for a debt?

A. Paying up what we had borrowed.

Q. At what time had you borrowed?

A. At different times all along.

Q. For how many years?

A. Well, sir, practically up to the time it went into insolvency.

Q. What was the first year? This shows, doesn't it?

A. 1896—sometime before we got any revenue.

Q. Well, now, aside from what was realized from the sale of the bonds, does that book here show how much money was borrowed? I want to know what the indebtedness of the company had been and for what. How much was realized from the sale of the bonds or from the bonds?

A. Well, we sold \$525,000 worth, at a discount of twenty per cent.

Q. That is, at eighty per cent?

(Testimony of J. M. Collier.)

A. Less \$165,000 taken over.

Q. Five hundred and twenty-five thousand dollars.

Does that represent the issue of bonds?

A. Yes, sir, bonds sold.

Q. Now, this \$165,000, or whatever it represents, of the water company, was that in bonds transferred?

A. As I understand, that was bonds of the electric company taken over in exchange for stock of the water company.

Q. That is, in payment for the water company's property, or stock, practically?      A. Yes, sir.

Q. After taking out that \$165,000 of bonds, at par value, out of the \$525,000 issued, you would have a certain amount. How much did you realize from the sale of it?

A. Whatever that is left, less twenty per cent.

Q. Can you give me the exact amount?

A. It was at different times, of course, that was sold. I would have to go over the entire books from the beginning up to that date.

Q. You have not anywhere a statement of that amount?      A. No, sir.

Q. Now, as to the value of the property, I believe that is alleged here in this complaint to foreclose, that the property is slender and insufficient security for the payment of the indebtedness of the company, and we are disputing that. We want, therefore, as near as possible, to get at the value of this property, not only its cost, but its actual value. I don't know how we will

(Testimony of J. M. Collier.)

get at the actual value of that property without having experts testify, but we can get at the cost of it.

Mr. CORY.—Then you can find the revenues. That will determine, to a certain extent, what the value of the property is.

The WITNESS.—You mean, the value of the plant?

Mr. CORY.—Yes.

Mr. CHURCH.—Q. Now, didn't the company receive something like a quarter of a million dollars, aside from the \$165,000 worth of bonds that were transferred for the water company's property or stock?

A. I would have to figure on it.

Q. You could tell very quickly by figuring, couldn't you? As I figure it, it makes about \$218,000.

Mr. CORY.—Two hundred and eighty-eight thousand dollars isn't it?

Mr. CHURCH.—Yes, \$288,000.

A. Yes, that is about it. I don't remember now. I figured it out yesterday.

Q. Now, I want to get at, as near as we can, what that money was used for, and what property was acquired with it, this \$288,000?

A. Well, the cost of construction—the original contract with the electric company was \$113,500, dynamos, plant, and stringing the wire on the pole line, reservoir site, etc.

The further taking of testimony herein was here continued until to-morrow, January 4th, 1901, at 2 o'clock P. M.



(Testimony of J. M. Collier.)

Office of San Joaquin Electric Co.,  
Fresno, January 4th, 1901.

It is stipulated by the attorneys present and representing the different parties, that the further taking of evidence in this matter be continued, to be taken up on five days' notice, by either party, and that the hearing and all matters of that kind be stayed in the interim.

Office of San Joaquin Electric Co.,  
Fresno, March 6th, 1901.

Pursuant to stipulation and notice last hereinbefore set forth, the above-entitled matter came on for further hearing, and the following proceedings were had and testimony taken:

J. M. COLLIER, recalled by intervenors for further examination, testifies as follows:

Mr. WORKS.—Q. You have testified that the Electric Lighting Company issued its bonds in the sum of \$525,000, and that of that amount \$165,000 was used in the purchase of the stock of the Fresno Water Company. Is that correct? A. Yes, sir.

Q. So far as the amount of \$165,000 is concerned, those bonds were used at par, if I understand you?

A. Used as what?

Q. At par? A. Yes, sir, I think so.

Q. The balance of the \$525,000 of bonds were sold at 80 cents on the dollar? A. Yes, sir.

Q. That would realize to the company \$288,000, would it not?

(Testimony of J. M. Collier.)

A. Yes, sir. I suppose those figures are correct.

Q. Well, you are at liberty to figure it and see that it is correct.

Mr. CORY.—That is a mere matter of computation; no need of taking up time to do it.

Mr. WORKS.—No, not unless the witness desires. If I make any mistake I want him to correct it, because I am not much of a mathematician.

Q. If I understand you, the company expended in the construction of this work \$363,900. Is that correct?

A. What date was that, Judge?

Q. That was, I suppose, up to the date of the defalcation in the interest. I don't know just when your attention was directed to, but those are the figures you give. You don't seem to fix the date here. Can you fix that date for us, Mr. Collier?

A. Those are about the figures. I notice the 1st of January, 1899, there was an indebtedness of about \$355,000.

Q. I find, from the statement of resources and liabilities of the San Joaquin Electric Company, as of date December 31, 1899, the item of construction, \$363,990.06. Is that a correct statement of the amount of money expended by the company up to that date?

A. Yes, sir.

Q. In construction?                    A. Yes, sir.

Q. Then, if I figure correctly, there would be a difference between the amount realized from your bonds and

(Testimony of J. M. Collier.)

the amount expended in construction of \$75,990.06. Where did that latter sum of money come from that was used in construction?

A. I don't know as I understand you.

Q. Well, there was used in construction \$75,990.06 in excess of the amount realized from the sale of your bonds. The question is, how was that additional amount made up that was used in the construction? Did you levy any assessment on your stock?

A. No, sir. That was from the receipts of the water company and electric company, and amounts we borrowed different times.

Q. Where did you borrow money from?

A. We borrowed it from the local banks and individuals.

Q. Now, on the 1st of January, 1899, what was the indebtedness of the San Joaquin Electric Company? That is the date when the default occurred, as I understand it. That would be the end of the year 1898. You can take December 31st, if that is more convenient, the close of the year.

A. It was \$355,532.

Q. Of what items was that indebtedness composed?

Mr. SEYMOUR.—Excuse me, Judge. He is giving the cost of construction.

Mr. WORKS.—Oh, no. I want the indebtedness. I wondered if you were that much in debt at that time.

Mr. CORY.—You might segregate it.

(Testimony of J. M. Collier.)

Mr. WORKS.—Yes, I would be glad to have you segregate it.

A. Sperry Flour Company, \$6.43; Washburn Mower Manufacturing Company, \$52.75; Kutner-Goldstein Company, \$75.88. Salary list, due different individuals, C. G. Smith, \$65; W. H. McCurdy, \$75. Now, bills payable. That was notes that we had given, \$14,150.

Mr. CORY.—Do you want a segregation of that?

Mr. WORKS.—No, that is not necessary.

The WITNESS.—(Continuing.) L. Shelley, \$460.10, salary; T. L. Hendrickson, \$65.

Mr. CORY.—Salary?

A. Yes, sir. National Carbon Company, \$65.

Mr. CORY.—Better state what it is for.

A. For supplies. That was for carbons, the last one. Electrical Appliance Company, supplies, \$170. General Electric Company, \$6,135.66.

Mr. CORY.—What is that?

A. That was for supplies, material for construction purposes. Our interest then was unpaid, \$18,375.

Mr. WORKS.—Q. Is that the interest on the bonds?

A. Yes, sir. J. N. Smith, salary, \$120.75 George D. Jewett, \$88.25, salary, the last two, and there was due the Fresno Water Company, \$22,688.22.

Mr. CORY.—Q. Money borrowed?

A. That was money borrowed. George Anderson, salary, \$50.75; Paul Austin, salary, \$35; W. E. Shack-

(Testimony of J. M. Collier.)

ford, salary, \$57.35; J. J. Sweeny, salary, 243.90; J. A. Thunen, salary, \$700.10; J. S. Eastwood, \$188.80—

Mr. CORY.—Salary?

A. L. L. Cory, \$857.90. There was actually more due him then.

Mr. WORKS.—Q. What was that for?

Mr. CORY.—Services for the corporation, attorney's fees.

The WITNESS.—Pelton Water Wheel Company, \$653.41; F. Serpas, salary, \$65; F. Seymour, salary, \$570.85; H. G. Lacy Company, \$23.75. That was supplies. J. E. Sutherland, salary, \$65; California Electrical Works, supplies, 411.40; G. W. Hazelton, salary, \$73.55; Robling Sons Company, supplies, \$99.52. That is the total.

Mr. WORKS.—I wish you would make a statement of these items of indebtedness, segregating all items that go into construction and items that would be included in your operating expenses, including all salaries and amounts paid for other services in operating the plant, and file it as part of your testimony, as Intervenor's Exhibit "E." You can do that, Mr. Collier, at your leisure. What I want to show is just how much was due then for construction, and how much for ordinary operating expenses. You can easily segregate them, and give your totals of the two items.

The WITNESS.—The interest would not come in that, the bond interest?

(Testimony of J. M. Collier.)

Mr. WORKS.—No, that is a separate item altogether. Of course, we all know what that is.

The WITNESS.—Well, the amount due these different parties, for instance, the water company, would that be construction?

Mr. CORY.—Money borrowed for construction work.

Mr. WORKS.—If you know what that was borrowed for; if for construction, it would be included in that item. You will have to determine that as nearly as you can for yourself. If you borrowed the money to go into construction, it should go into that class.

Q. At the time this money was borrowed from the Fresno Water Company, the company was practically owned by the San Joaquin Electric Company, was it not?

A. Yes, sir.

Q. And the Fresno Water Company was earning a net surplus of revenue at that time?

A. The water company was, yes, sir. Excuse me. You say it was earning a net surplus? I don't know as I understand.

Mr. CORY.—It was a paying proposition, is what he means.

Mr. WORKS.—I will come at that a little more particularly. We will get at the facts, if we can, Mr. Collier. I see by this statement of the earnings and expenditures of the water company that for the year 1897 its net earnings, not including interest on its bonds, amounted to \$22,411, 94.

(Testimony of J. M. Collier.)

A. The water company?

Q. I am speaking of the water company now, yes, sir. The interest on its bonds for the same year amounted to \$19,500, leaving a surplus for 1897 of \$2,911.94. That is a correct statement of the condition of the accounts for that year, is it?

A. I couldn't say, not having the figures before me.

Q. 1897 I am speaking of now.

A. That will be January 1st, 1897?

Q. No, that will be January 1st, 1898, for the year 1897, ending the 31st of December.

A. I have, total receipts for 1897, \$47,601.20, from water sales, etc., and for sale of real estate, \$3,500 additional.

Q. I wish you would look at Intervenors' Exhibit "A" and state whether that is a correct statement taken from your books handing paper to witness).

Mr. CORY.—Is this a copy you made?

Mr. WORKS.—Yes, a copy of it. I am only using that for convenience, being so much handier, being in typewriting. He can look at the original. You can take the original and testify from that, if there is any question about it being a correct copy.

Mr. SEYMOUR.—These are not Collier's make-up.

Mr. WORKS.—They are made up by Price, but I think Mr. Collier testified when on the stand before that he had examined them and they were correct.

(Testimony of J. M. Collier.)

Mr. SEYMOUR.—Substantially. There seems to have been a little discrepancy, if I remember right. (Intervenors' Exhibits "A," "B," "C" and "D" are here handed to the witness.)

Mr. CORY.—You looked those over once, didn't you?

A. I don't remember now.

Mr. CORY.—I handed them to you and asked you to verify them, and you came to the office and said there was some discrepancy.

Mr. WORKS.—Yes, the testimony shows that. I want you to examine Exhibit "A," as to the water company.

A. Substantially the same.

Mr. SEYMOUR.—A few little discrepancies.

Mr. WORKS.—Q. What do those discrepancies amount to in dollars and cents, any material amount?

A. I have not the statement made in the same form, but, I think, practically the same.

Q. Then, according to that statement, the net surplus revenue of the Fresno Water Company for that year was \$2,911.94? That is substantially correct, is it?

A. Yes, sir; that is substantially correct.

Q. Then, taking the year 1898, the net surplus is shown to be \$3,270.62, after payment of interest. Is that correct?

A. In this statement we just passed from there is quite an item of construction. Of course, this money was paid out again, in construction.



(Testimony of J. M. Collier.)

Q. We will come to that directly. That was your net surplus for that year? A. Yes, sir.

Q. Whatever it may have been used for subsequently. Then, for the year 1899 the net surplus is \$7,926.58?

A. 1898 you want now?

Q. 1899 I am speaking of now. For 1898 it was \$3,270.62?

A. That is the net earnings as shown by your statement, but my statement varies from that a little. It is a little differently gotten up.

Q. Well, does it vary materially in amount, is the question?

A. There seems to be a discrepancy in receipts.

Q. How much of a discrepancy?

A. Two hundred and twenty-nine dollars and ninety-seven cents.

Mr. SEYMOUR.—Less.

Mr. WORKS.—Q. That is to say, your receipts were less, that much?

Mr. SEYMOUR.—No.

Mr. WORKS.—Q. Were more that much?

A. Yes, sir.

Q. How much, \$229.97?

Mr. SEYMOUR.—This seems to be in a little different form, Judge, here.

The WITNESS.—His total expenditures, aside from bond interest, is summed up here \$21,199.61. I sum it up \$22,536.73—a difference of \$1,137.12.

(Testimony of J. M. Collier.)

Mr. WORKS.—Q. That difference would be which way?

A. He lacks that much of having enough on his statement.

Q. Then, will you give me what would be the exact net earnings, according to your books, for those three years, '97, '98 and '99? You can just take those general footings, with the discrepancies that you discover. The figures, according to my figures, are \$14,334.11, but those discrepancies might change it.

A. I have no statement showing earnings—simply statement of disbursements and receipts. What years are those?

Q. 1897, 1898 and 1899, covered by your exhibit. Those footings will give you the amount, taking off the discrepancies, whichever way it may be. You say they are not exactly correct. If it were not for that, we could use those footings. What would that give as the totals for the three years?

A. For the three years it would amount to \$12,542.05.

Q. That, then, would be very nearly the amount that you borrowed for the benefit of the Electric Company, as you have already stated?

A. At that time the Electric Company owed us \$22,000.

Q. At what date?           A: December 31, 1898.

Q. If this was the net earnings of the Water Company and it belonged, in effect, to the Electric Company,

(Testimony of J. M. Collier.)

why were you borrowing money from the Water Company and paying interest upon it?

A. I don't understand your query, exactly. We were borrowing from the Water Company at different times to keep up the indebtedness, or to pay interest and other debts of the Electric Company.

Q. But why were you borrowing money from the Water Company and paying interest on that money when it had that much of net earnings after paying all of its liabilities, and that money belonged to the Electric Company?

A. You mean the earnings of the Water Company belonged to the Electric Company?

Q. Yes, you so stated, that it owned the Fresno Water Company.

A. Well, their accounts were kept separately.

Q. Certainly. But why should you be paying interest on the money that belonged to you?

A. I don't understand.

Q. Why was it, if there were net earnings to that extent in the Water Company, that that amount was not credited upon the indebtedness due from the Electric Company to the Water Company?

A. Due from the Electric Company to the Water Company? I admit that I don't understand the question.

Q. What reason was there why this money that came in as net revenues of the Water Company could not have

(Testimony of J. M. Collier.)

been applied upon the interest that was due upon the bonds of the Electric Company?

A. Well, as I see it now, we paid it out for construction purposes.

Q. Construction purposes of what company?

A. For the Electric Company.

Q. Then you did use that money that you got from the Fresno Water Company, did you, for the Electric Company?

A. Yes, sir, every cent of it.

Q. And you used it in construction?

A. Yes, sir.

Q. When did you make your application of it in that way?

A. Why did I?

Q. When?

A. Well, at different times, whenever it was available.

Q. Well, why—if you appropriated the money in that way that actually belonged to the Electric Company—why do you carry it as indebtedness of the Electric Company to the Water Company?

A. Simply because we kept the two companies' accounts separate and distinct.

Q. That is the only reason?

A. Yes, sir.

Q. They were both owned by the same company?

A. Yes, sir.

Q. And it was simply for the purpose of keeping the books and accounts separate for the two companies?

A. Yes, sir. When we borrowed from one we credited the other.

(Testimony of J. M. Collier.)

Q. But you used the money indiscriminately, did you not, for the benefit of the owners of both?

A. In common, yes.

Q. Then, as a matter of fact, the amount of net earnings of the Fresno Water Company was so much net earnings for the Electric Company, was it not?

A. Yes, sir, or for both companies.

Q. Treating it that way, as belonging to the same person. Now, going to the account of the San Joaquin Electric Company, Exhibit "B" shows that the net earnings of the San Joaquin Electric Company, not counting the interest upon its bonds, was \$10,878.80 for 1897. Is that correct?

A. Well, now, in answer to that, Judge, this statement, as per Exhibit "B," we figured out that amount of net earnings. My books I have not in that form. I can tell you, however, that the gross receipts were \$41,394.57.

Q. Did you compare this statement of his with your books since you testified before? A. No, sir.

Q. You were requested to do that, were you not?

A. I don't know as I was. If I was, it slipped my memory.

Q. Taking this exhibit to be correct, the net surplus of the company for those three years would be as follows: For 1897, \$10,878.80; for the year 1898, \$14,173.49; and for the year 1899, \$29,957.28, which would make a total of 55,009.57 for those three years. What has been done with that surplus?

(Testimony of J. M. Collier.)

A. That has been expended in construction.

Q. When? A. During those three years.

Q. I understand that this account includes your construction expense, and your net earnings are over and above all expenses paid, including your construction, else it would not be a net earning.

A. I do not think his statement here is correct. I notice that I have during the year 1897 charged to interest paid out \$16,131, and Mr. Price's statement is only \$1,057.

Q. Well, how much interest did you pay during that year? A. We paid \$16,131.01.

Q. When? A. During the year 1897.

Q. What time in the year 1897?

A. I would have to look over the ledger.

Q. Well, wait a moment. As I understand this account, it does not take into account at all the interest upon the bonds, either upon the credit or debit side. Except as to that the statement would be correct, would it not?

A. Well, I don't like to say, unless I had a statement gotten up by myself.

Q. Well, assuming this statement to be correct, that would be the condition of the account? There would be net earnings of \$10,878.80, excluding from the account the question of interest upon the bonds?

A. Yes, sir.

Q. What is this item of interest, \$1,057.72? That

(Testimony of J. M. Collier.)

was not interest upon the bonds, was it? It was for other money you had borrowed?

A. That must have been—in his statement it must have been for interest due on moneys borrowed from bank.

Q. Why were you paying interest upon money borrowed from the bank and allowing your interest to default upon your bonds when you had this net earning of \$10,878.80?

A. The money, instead of being applied to the interest, was applied to construction.

Q. Well, but—Mr. Collier—this account shows that, after paying all your items of expenses, including, necessarily, your construction, you had a surplus.

A. We never had a surplus, at any time.

Q. Sure about that, are you?      A. Yes, sir.

Q. Taking the year 1898, this account shows a surplus of \$14,173.49. What did you do with that?

A. That was paid out in the same way.

Q. For construction?      A. Yes, sir.

Q. The following year?

A. The following year, or the year as—

Q. If it was for that year it would be in your account, as one of your expenditures?      A. Sir?

Q. If it was paid out during that year it would be in your account as part of the expenditures?

A. Yes, sir.

Q. Then it must have been carried over and used for that purpose in the following year?

(Testimony of J. M. Collier.)

A. It was expended as it accumulated.

Q. Well, Mr. Collier, this statement of your net account must necessarily be the net amount on hand at the end of that year, isn't it?

A. Amount of cash on hand?

Q. No, not necessarily cash on hand, but the difference between your expenditures and your earnings?

A. Yes, sir, but it was represented in other ways, in improvements that we had put in.

Q. I understand this covers the amount of expenditures for improvements, doesn't it, up to that time? You don't mean to tell me your books showing amount of your expenditures and earnings during the year and your summing up of your books leaves out the important item of construction, do you?      A. No, sir.

Q. Then it is included, and these net earnings are over and above your construction account as well as your operating expenses?

A. As shown by his statement, it is.

Q. Well, if you find that your statement differs from his, I will ask you to furnish me a statement of your account, and attach it to your deposition. Then, for the year 1899, your net earnings appear by this exhibit to be \$29,957.28?      A. Yes, sir.

Q. Then you had for those three years a net earning of over \$55,000, did you not?

A. That is the amount, summed up, of those three items.

Q. Now, can you tell me why it was that during that



(Testimony of J. M. Collier.)

time, and with those net earnings, your company was borrowing money from other people and paying interest upon it, and letting interest upon those bonds go by default?

Mr. CORY.—You are now referring to Mr. Price's statements, not Mr. Collier's?

Mr. WORKS.—Yes, sir. I am asking him to correct it, if it is not correct.

A. As I stated before, Judge, we never had any surplus on hand, and my statement would not show any at all.

Q. How can you account for the discrepancy in Mr. Price's statement of the condition of your books, taken from your books, then?

A. It is a different method we have of compiling the accounts.

Q. Did you know when Mr. Price was examining your books?

A. Yes, sir, he had free access—

Q. You exhibited them to him?

A. Yes, sir.

Q. Is any item left out of this account that appears upon your books, your summing up of the books for the year? If there is, I wish you would point it out.

A. I couldn't say. It is compiled in a different form.

Q. Well, I will have to ask you to compare it, and if there is any item that is omitted I would like to have it, either on one side or the other of the account.

Mr. CORY.—I will state, Judge, we did examine this, as I remember it—I thought Mr. Collier did, too—and

(Testimony of J. M. Collier.)

we found no charge for permanent improvements, which would have made a difference between the books and Mr. Price's statement, and he couldn't remember why it was left out.

Mr. WORKS.—If there is anything that is omitted from this account, on either side, I want to know what that is.

The WITNESS.—Yes.

Mr. WORKS.—And what it amounts to.

Mr. CORY.—If Mr. Collier has not examined it, I presume he can't do it in a minute; but if you can do it, Mr. Collier, and show where the discrepancy exists—

Mr. WORKS.—If there is any. We might read off Mr. Collier's account of precisely the same date, at the end of each year, and we will have it.

The WITNESS.—I can do that.

Mr. CORY.—Or we can furnish it to you.

Mr. WORKS.—I am sorry it has not been done.

Q. When you were on the stand before, Mr. Collier, it was stated, either by you or Mr. Cory, that this account did not refer to or take in account the matter of betterments. What do you mean by "betterments"?

A. Well, permanent improvements, extension of the plant.

Q. Well, that would be part of your construction account, would it not?

(Testimony of J. M. Collier.)

A. Yes, sir. In 1897 the plant was far from being finished.

Q. You have been adding to it, I presume, each year?

A. All the time, monthly.

Q. Where and how do you carry that account of construction, of betterments?

A. Charged it up to construction account.

Q. And when you make up your summary of your books at the end of the year, as you seem to have done here, that is carried into that summary, isn't it?

A. Yes, sir, it is carried in.

Q. Well, then, if this statement includes what appears upon your books, at the end of each year, it would necessarily include what you call betterments or construction, would it not? Can you turn to your construction account of 1897? A. Yes, sir.

Q. What is the total of your expenditures for construction for that year?

A. I presume there is some interest in that—difference on the sale of bonds.

Q. That total amount you have there would include the amount that is applied from the sale of your bonds? That is the first year you did business?

A. 1897, yes, sir, for the full year.

Q. Of course that was the year when your main construction was done and paid for out of the sale of your bonds? A. Yes, sir.

Q. That would not aid us very much then.

A. \$89,115.95. I can't say without I go into the ac-

(Testimony of J. M. Collier.)

count whether that represents the correct amount expended on construction or not. That is the footing of construction account December 31 to December 31 the following year.

Q. Well, according to your previous statement, your entire expenditure for construction up to December 31, 1898, would be \$75,000 over and above the amount realized from your bonds? A. That is, for 1898?

Q. Up to 1898, but a part of that you say your borrowed, you are not able to tell us how much?

A. I can tell you by going over.

Q. Well, we haven't time now to undertake to figure it out and it wouldn't be a very good time for you to stop now to do it. You would want to take your time to do it, I suppose?

A. I am very sorry I didn't go in and make a statement.

Q. Yes, so am I.

A. I could have had it to compare with Mr. Price's statement.

Q. Could you take these statements of Mr. Price and run over them between this and 2 o'clock and ascertain whether there are any omissions and if so what they are?

Mr. CORY.—He couldn't certainly, do that.

The WITNESS.—Not very well. For my satisfaction, I would like to make a statement for the three years, 1897, 1898, and 1899.

(Testimony of J. M. Collier.)

Mr. CORY.—You could go over Mr. Price's statement and see what has been left out and of what it consists, couldn't you?

Mr. WORKS.—These are simply the summings up of the three years.

Mr. CORY.—I understand you have already made statements for those three years?

A. Yes, sir, I have a form of statement here.

Mr. SEYMOUR.—It differs from Mr. Price's.

Mr. WORKS.—As I understand it, the difference between the accounts as made here and yours is that he sums them up under different headings, salaries, for instance, supplies, expense, repairs, power-house expenses, etc., while yours is not segregated in that way?

A. No, sir; it is in quite a different form.

Q. Well, passing that for the present, according to this statement the net earnings of the Electric Company have increased each year from the beginning, it appearing that for 1897 the net earnings were \$10,878.80, for 1898, \$14,173.49, and for 1899, \$29,957.28. Has that increase in the earning capacity of the company continued since that time?

A. Yes, sir. I can give you the gross figures.

Q. You mean, of the net earnings?

A. Yes, sir, for 1900.

Mr. CORY.—I suppose that is assuming there were net earnings?

The WITNESS.—I mean gross earnings.

(Testimony of J. M. Collier.)

Mr. WORKS.—I have the figures for 1899.

The WITNESS.—Balance on hand January 1st, 1900, \$248.58.

Mr. WORKS.—Q. What do your gross earnings show for that year as compared with the others, in the gross earnings, as I understand, for 1897 being \$41,520.84; for 1898, \$38,105.90; and for 1899, \$54,415.74. Now what were the gross earnings for the year 1900?

A. Fifty-four thousand dollars for 1899?

Q. For 1899, according to this statement.

Mr. CORY.—Mr. Price's statement.

Mr. WORKS.—Yes, taking his statement, \$54,415.74.

A. Fifty-two thousand three hundred and twenty-seven dollars and fifteen cents. I thought there was an increase.

Mr. CORY.—Q. What are you speaking of now, for 1900?  
A. Yes, sir.

Mr. WORKS.—Q. Do you mean to say there was a falling off in the gross revenues for 1900 as compared with the others? Are you right about that?

A. Well, no, sir. The actual receipts for 1899 was \$47,952.71. That includes current sold, lamps and material.

Q. This account shows for 1899 receipts current \$54,057.46. Do you know where that item came from? I am referring now to Mr. Price's statement for 1899.

A. No, sir.

(Testimony of J. M. Collier.)

Q. Exhibit "B."

A. Current sold and power was \$44,049.11—for lamps and materials, \$3,903.10, making a total of \$47,952.21.

Q. When was that summary of the accounts made up?

A. At the end of the year 1899, December 31, 1899.

Q. Immediately at the close of the year?

A. Yes, sir.

Q. Then your gross receipts for 1900 was how much?

A. The gross receipts for current—this is for 1900—gross receipts for current sold was \$50,384.70. That is the actual cash receipts. The merchandise sales, lamps, materials, \$1,942.45, making a total of \$52,327.15.

Q. What were your expenses for that year?

A. Expenses for repairs salaries, carbons and expenses, that is general expenses, taxes, supplies and interest on small loans, was \$30,285.86.

Q. Leaving a surplus of how much?

A. I have not figured out that.

Mr. CORY.—About \$22,000.

The WITNESS.—The supplies purchased was three thousand—

Mr. WORKS.—Take your totals and subtract one from the other. That will give you the net surplus.

Mr. CORY.—That item of supplies, he has to include that in his disbursements.

Mr. WORKS.—Whatever is a part of the expenses.

A. Actual cash balance was—

(Testimony of J. M. Collier.)

Q. I am not talking about cash balance. I want you to subtract your expenses. You have the total there. You gave me the total. A. Yes, sir.

Q. Well, now, subtract one from the other and give me the difference.

A. What will we do about construction?

Q. Well, answer my question first, and then we will come to construction.

A. Gross receipts, with balance on hand left from last year was \$53,342.38; disbursements for salaries, repairs, carbons, taxes, arc supplies and interest was \$30,285.86, for merchandise supplies, \$3,147.18, making a total of \$33,433.04, and a surplus of \$19,909.38.

Q. Now, you have mentioned the subject of construction account. What does your construction account show for 1900?

A. Construction account shows little extensions around town and different points here, about \$2,237.18; water storage construction, \$17,325.73; and for water storage, again, \$6,000. That is payment on water contract, making a total of \$25,562.91.

Q. What is that water contract, and who is it with?

A. That is with—it was some property we had to purchase up there to protect the water supply.

Q. Well, that is a part of the property of the company then that has been purchased?

A. Yes, sir.

Q. Which has added that much to its value?

A. Yes, sir, being purchased.



(Testimony of J. M. Collier.)

Q. And for that purpose you have asked the court to issue receiver's certificates, have you not, to use in expenditures of that kind?

Mr. CORY.—Not on that particular item.

The WITNESS.—More particularly water storage.

Mr. WORKS.—Q. It is included in water storage?

A. The reservoir site, dam, etc.

Q. Well, that is property that you purchased for the benefit of the company and adds to its value?

A. Yes, sir.

Q. About what amount have you expended for that purpose?      A. The water storage?

Q. Yes, sir.      A. We have expended about—

Mr. CORY.—You mean during that year?

Mr. WORKS.—Yes, I mean during that year.

A. Seventeen thousand three hundred and twenty-five dollars and seventy-three cents.

Mr. WORKS.—Q. Now, will you tell me what sum in gross this company has expended for betterments and extensions of its plant, including this water storage and the other things you have mentioned, since this foreclosure suit was brought.

Mr. CORY.—The receiver was appointed the very day the suit was commenced.

Mr. SEYMOUR.—At that time he opened an entirely new set of books.

Mr. WORKS.—That is all right.

A. To the 1st of February we spent \$7,146.48, that

(Testimony of J. M. Collier.)

is, for general construction, and for the reservoir and water storage, \$19,510.31.

Q. That would be a total of—

A. That would be a total of \$26,656.79.

Q. What is the condition now of those improvements that have been made to the system? Are they completed or in course of completion?

A. I couldn't answer that question.

Mr. WORKS.—We will have to ask the engineer about that. I don't see that I can go on, satisfactorily, with Mr. Collier without his accounts in some sort of shape. I think we will relieve him for the present, and if he can't get this in shape by 2 we will have to wait a little longer, I suppose.

The WITNESS.—That is, from the books of both companies, for three years?

Mr. WORKS.—Yes, but the water company is not so material. There does not seem to be much discrepancy between you as to the water company. What I want, particularly, is the electric company. Mr. Cory may desire to have you go over the other, if there is anything wrong about that—I don't know.

A. I might give you a comparative statement from the receipts for the past few months.

Mr. WORKS.—Yes, we would like to have that.

Mr. CORY.—You better go over Mr. Price's statement and endeavor to compare it with your own and see how

(Testimony of J. J. Seymour.)

they differ, and if they differ in any particular items, what the items are and how much they differ.

Mr. SEYMOUR.—At any rate, he can give his totals, if it is so hopelessly intertwined that he can't do more.

Mr. WORKS.—We would like to have the specific items not included in Mr. Price's statement.

J. J. SEYMOUR, recalled for intervenors, testifies as follows:

Mr. WORKS.—Q. At what date did you become the receiver of this company, Mr. Seymour?

A. It was sometime in August, wasn't it, 1899, I think.

Q. The record will fix that date, if you don't remember it. At what date did the company commence to do business?

A. The Electric Company?

Q. Yes.

A. It was incorporated April 2d, 1895.

Q. Commenced business immediately after that?

A. Yes, sir.

Q. When was the Fresno Water Company incorporated?

A. That was a good many years ago, away back.

Q. When did the Electric Company become the owner of its stock?

A. It was some time after the incorporation of the Electric Company, within a few months.

Q. What is the connection of these two companies, if any, in the direction of their business?

(Testimony of J. J. Seymour.)

A. Well, they practically—they have the same offices and partially the same officers and employees.

Q. Well, is there any connection between them in their business. I am not speaking now about the manner in which it is conducted, but does the water company, for example, furnish any water power, or anything of that kind, to the electric company, or is there any connecting link between them in a business way?

A. The water company is supplied with current for the pumping of water by the electric company, under a contract.

Q. Is there any other connection between them?

A. The electric company—do you want this question of stock of the water company—

Q. No. We have that already. You have testified that the electric company owns all the stock, practically, as I understand. I am trying to get at the business connection in the direction of their business. You say that the electric company furnishes current to the water company, in pumping the water?      A. Yes, sir.

Q. Is there any other way in which they are connected in a business way?

Mr. CORY.—They occupy the same offices.

Mr. WORKS.—He has testified to that.

Mr. CORY.—And the power-house has the same sub-station.

The WITNESS.—The sub-station is adjoining, on the same plat of ground. Is that in the scope of your inquiry?

(Testimony of J. J. Seymour.)

Mr. WORKS.—Q. They are practically operated by the same persons, and you simply keep their business and their accounts separate and distinct?

A. Yes.

Q. When there is any surplus earned by the Fresno Water Company, what is done with that money?

A. Well, practically, the way we did, the electric company borrowed it from the water company. That is the way the books will show.

Q. It was not declared as dividends, but you simply used the money, and your books show that you borrowed it from the water company?

A. Yes, sir.

Q. Was any interest paid on it?

A. No.

Q. Then, as a matter of fact, the showing of indebtedness here to the water company is really a fictitious indebtedness, in effect?

A. Well, no, because the water company, having the better outside reputation, occasionally we borrowed money so that the indebtedness of the water company at stated times would be really the indebtedness of the electric company.

Q. You mean you used the property and the credit of the water company to borrow money for the benefit of the electric company? Is that it?

A. Yes.

Q. Is that one of the reasons for keeping the two separate and distinct corporations?

A. No. They were separate corporations, and for the first few months all the stock of the water company was not absorbed by the electric company.

(Testimony of J. J. Seymour.)

Q. Did you have any conference with the bondholders, or the representatives of the bondholders in view of your inability to meet the interest January, 1899.

A. Up to a certain period we were in business connection with the Municipal Investment Company of Chicago, a concern that has become insolvent and gone out of business since. Up to the time of the termination of that relationship with them our connection with the bondholders was largely through them, and occasionally bondholders would come in or representatives of them, and investigate the books, from time to time. We had a procession of them in here, you might say, but after that time the only communication we had was after we had defaulted on the first payment of interest on the bonds, in 1899, I think it was. I think it was sometime about March or April Mr. Street came here with letters, representing that he represented a majority of the bondholders, and wanted to look at our books, investigate the state of the affairs, and he did so. That was the only representative of the bondholders that I remember of our seeing.

Q. To what do you attribute your inability to meet your obligation for the interest at that time?

A. A short answer would be, lack of funds, of course.

Q. Yes, but there were some reasons for a lack of funds. I would like you to explain what you understand to be the difficulty.

A. As I stated before, we were in business relationship with the Municipal Investment Company, of Chicago.

(Testimony of J. J. Seymour.)

go, who contracted with us to take bonds of us at eighty cents on the dollar. Well, they fell down on their contract with us before the plant was completed, and from that time on we were, simply, with an unfinished plant on hand, with large debts coming in from all sides. We were simply at our wits ends what to do, so we did the best we could all the time and were overwhelmed with debts all the time. We made provision as soon as we could to pay interest on our bonds, in addition to our other perplexities. That, of course, you might say, was made out of the sale of bonds, up to a certain time.

Q. You did sell your bonds, at the same price the Municipal Investment Company obligated themselves to pay?

A. No, we never sold any except to them.

Q. You sold the bonds that have been mentioned here, which was more than sufficient to pay for your construction work?

A. No, we did not.

Q. Well, the figures here show that you sold your bonds, over and above the amount that was used in purchasing the stock of the water company, amounting to \$288,000, in round numbers? That is correct, isn't it?

A. Well, we sold them—

Q. Well, answer my question, whether that is a correct statement of the amount that you realized?

A. No, it is not a correct statement.

Q. Well, what did you realize from them, then?

A. Well, I will have to make an explanation. We sold them to the Municipal Investment Company. They

(Testimony of J. J. Seymour.)

agreed to take over certain indebtedness from the General Electric Company, that is, owing by us to the General Electric Company, amounting to \$113,500. That was the first purchase price of the plant. Well, the General Electric Company at first took their notes for that amount, and we surrendered the bonds amounting to about—\$142,000 of the bonds were placed as collateral for that \$113,500. Well, the General Electric Company retained a lien on the property, however—

Mr. CORY.—Q. You mean, on the plant they were putting in?

A. Yes, on the plant that they were putting in. Well, the Municipal Investment Company reduced that indebtedness to something like \$75,000, to that amount, and they had bonds proportionately, but at the time they failed there was still due about 75 or 80 thousand dollars on that original contract and the bonds were in the hands of the General Electric Company to the extent of about a hundred thousand dollars. Those bonds were never sold, really, to them. On the books they are shown as sold.

Q. What amount of bonds would that be?

A. About \$100,000—\$98,000 par value.

Q. Do you know where those bonds are? Are they still in the hands of the General Electric Company?

A. No. I was told—I have no means of knowing—I was told that the representative of the bondholders purchased that account and took up the bonds, and they are now in his hands.



(Testimony of J. J. Seymour.)

Q. What do you mean by "the representative of the bondholders"?

A. Mr. Street, C. F. Street. I have no means, personally, of knowing that.

Q. Then, as you understand it, the debt of the company to the General Electric Company was paid?

A. Was paid by somebody, yes, sir.

Mr. CORY.—Did the shortage of water have anything to do with this?

Mr. WORKS.—That is what I am about to get at.

A. When they fell down we were at sea, I was going to say. Our plant was incomplete. We couldn't furnish current to the consumers unless we made additional improvements, additional betterments, so that we were crowded on that account. Then the dry year came along and we had to shut down several months, and that also crippled us.

Q. If the dry year that you speak of had been an ordinary year and in the condition in which you found yourselves, you would have been able to have met this interest, would you not?

A. Well, I am not prepared to state that.

Q. Well, what is your judgment about it?

A. We would have had a much better chance. We would have probably gotten credit so as to have borrowed money to proceed, but we probably couldn't have gotten it out of the direct revenues.

(Testimony of J. J. Seymour.)

Q. Would it have lacked very much of meeting the obligations of the company if you had had an ordinary year, such as, for example, we have this year?

A. We possibly would have pulled through.

Q. Did you explain that situation to Mr. Street?

A. Yes, we explained fully the entire position of affairs here, but we told him as far as we could see, in view of the condition of affairs, that we saw no means of avoiding a six months' default. In addition to our other troubles, we had a lot of floating indebtedness that I had personally made myself liable for, loans made on my personal assurance that they would be repaid.

Q. Have those been taken up since?

A. Yes, sir.

Q. All of those?           A. Yes, sir.

Q. When was the last of those paid?

A. They were generally paid before the six months' default was made.

Q. You cleaned up all of those before the default in your interest?

A. The six months, yes, sir. There was some—I don't remember—some \$10,000, probably, of that nature. The money was borrowed to pay the preceding six months' interest.

Q. What is the condition of the company now, at this present moment, with respect to its ability to earn revenues sufficient to meet the interest upon its bonds and pay its operating expenses?

A. I think it would be able to carry on its business.

(Testimony of J. J. Seymour.)

Q. And be able to use some of its revenues to meet the back interest, would it not?      A. Yes.

Q. What is it earning a month at the present time?

A. Bring that bank-book. That will give it, in round numbers.

Mr. CORY.—Last month's statement would give it.

Mr. WORKS.—Q. But for the dry year you would have been able to meet these obligations in the end?

A. At the time we thought that were it not for the dry year we would have pulled through and eventually come out all right.

Q. Don't you feel the same way now, Mr. Seymour?

A. Yes.

Q. But for the dry year you would have been able to meet your obligations?      A. Yes.

Q. And isn't it a fact, in your judgment, now, that within a reasonable time as receiver of this company you can earn enough money to pay this back interest and still keep your company going?      A. I think so.

Mr. CORY.—That dry year was something unusual, never had been heard of before?

A. Of course, Judge Works comes from the southern part of the State and understands what a dry year means.

Mr. WORKS.—Yes, thoroughly.

The WITNESS.—We had water to drink here all the time, Judge. That bank-book would have answered that other question.

(Testimony of J. J. Seymour.)

Mr. WORKS.—What I want is to have it in round numbers.

A. The gross receipts for the last five months ran about as follows: October, 1900, the monthly gross revenue was \$3,553.32, November, \$6,290.33. In that month we first began to make an increase in our rates, and that month also includes some back indebtedness that was paid up, like city warrants and that sort of thing, but December will show more clearly the increase. December shows \$5,374.23. January, \$5,488.93. February, \$5,817.60. Now, this is gross revenue. Now in addition to that is the Hanford extension, which is paying six hundred dollars a month, gross, but is applied on the back indebtedness, you know.

Mr. CORY.—Q. In addition to that isn't there \$500 from the water company?

A. In addition to that there is \$600 a month from the water company.

Q. Five hundred dollars, isn't it?

A. Six hundred dollars. It was increased last year. For last month we would have gotten in a gross revenue of \$7,000. For the month before, about \$6,700.

Q. Then, according to those figures, it would be a reasonable estimate to say that your gross revenue for this coming year will run at least \$70,000?

A. Gross revenues would be about \$80,000.

Q. Eighty thousand dollars, and what are your expenditures for your operating expenses, in round numbers?

(Testimony of J. J. Seymour.)

A. They are practically what they were back two or three years ago.

Q. That would be about how much?

A. There would be an increase, because with the bettering times, etc., the increase in the salaries had to be corresponding with other business.

Q. What would it be in gross per month?

A. I would not care to answer that offhand.

Mr. CORY.—Well, you can ascertain in a moment.

Mr. WORKS.—Yes, as near as you can.

A. For last year the salaries, repairs, carbons, expense, taxes, arc supplies, interest—

Q. That is, the interest not including the interest on the bonds?      A. Yes, about \$30,000.

Q. For the year?      A. Yes, sir.

Q. How do you think that would compare with the necessary expenditures for this year?

A. Well, there are sundry—merchandise, lamps, etc. well, say about \$32,000 would be practically about what they are this year. Of course, there is always a certain amount of construction accounts that have to go in.

Q. Yes, but that adds to your security all the time. Now, with respect to this Hanford extension, as I understand it, that extension was constructed by Lacy Brothers and the revenues derived from it are to be applied to the amount expended by them, and that has been done?

A. Yes.

Q. And there has been a surplus paid, that is a sur-

(Testimony of J. J. Seymour.)

plus over and above the interest, applied to the principal of that debt since that time?      A. Yes, sir.

Q. To what amount has that indebtedness been reduced at the present time? What I want to get at is the amount due at this time?

A. That amounts to something like \$15,000 at present. The books don't show precisely.

Q. What was the total amount in the beginning?

A. Twenty-six or twenty-eight thousand dollars.

Mr. EASTWOOD.—Thirty-six?

The WITNESS.—That included a lot of other things.

Mr. WORKS.—Q. What is the condition of that extension, as to whether there is any increase of earning capacity in that, or does it remain about the same?

A. They were to pay a minimum amount and we have not exceeded the minimum amount up to the present time, although we expect to do so before long.

Q. Anyhow, under existing conditions, that indebtedness will be paid, you think—

A. Inside of three years.

Q. At the rate of about \$450 a month?

A. Yes, it will be paid inside of three years.

Q. What additions have been made to the plant of the company since you became receiver?

A. The purchase of lands and the partial construction of the dam for the reservoir site.

Q. What was the occasion and necessity for that, Mr. Seymour?      A. The shortage of water.

(Testimony of J. J. Seymour.)

Q. The experience you had during this extreme dry year showed it was necessary to provide for the storage of water?      A. Yes, sir.

Q. And these expenditures have been made for that purpose and for the betterment of the plant?

A. Yes, the Judge has granted us permission to purchase an additional unit at the power-house by which we increase the capacity of the plant one-third. That machinery has been ordered.

Q. Where do you get your funds to make those additions and expenditures?

A. He allowed us to issue receiver's certificates in the matter of the reservoir construction, but provision is made for the payment of the cost of the increase in the plant from the revenues of the company.

Q. You think you will be able to do that out of the revenues you receive?      A. Yes, sir.

Q. When you make those additions to the plant, without reference to the reservoir site, that will add to your capacity about one-third?      A. One-third, yes.

Q. What will be the probable effect of that increase upon your revenues?

A. It will be very marked, because all the additional revenue we get will be net.

Q. What assurance have you of the increase in your business in case of an increase in your capacity? That is to say, have you any assurance of the patrons for that additional power?

(Testimony of J. J. Seymour.)

A. The assurance we have is, we are already loaded to our utmost capacity and are practically putting people off, refusing to allow them to—

Q. Is it your judgment with this increase of capacity you can increase your revenues one-third?

A. Well, it will take time.

Q. Of course, but eventually?

A. We will load up within a few years after the plant is added, within a year or so.

Q. And how much will that additional capacity probably add to your expenses of operation?

A. It won't add anything beyond the interest on the cost.

Q. You can handle that additional force with the employees you have now?

A. Yes, sir.

Q. Without adding to your expenses for employees, salaries and the like?

A. Yes.

Q. Has any report been made by you as receiver embodying these changes in the condition of the system and its probable ability to pay its way out, to the representatives of the bondholders?

A. We send them monthly statements of receipts and expenditures.

Q. Have you gone any farther than that mere summary and endeavored to explain to them what the probable outcome would be if you were given time to meet these obligations?

A. I have not.

Q. And so far as you know, their information is de-



(Testimony of J. J. Seymour.)

rived solely from the statement of the accounts up to the present time?           A. Yes.

Q. But I understand your judgment as to your ability to pay out this interest and keep the company going as a paying concern is based partially upon the outlook for the future?           A. Yes.

Q. When did you advance your rates?

A. The latter part of last year.

Q. For November?           A. November.

Q. Does that account entirely for your increased revenue, or have you been extending your business to additional consumers?

A. Well, it is entirely owing, you might say, to the increased revenue, because we were loaded at that time.

Q. Then your increase in capacity by the expenditures you are about to make and have partially made would add to that in the way of taking on new consumers?

A. Yes.

Q. When did you first hear anything about the proposed reorganization of this company?

A. The first time I heard any definite statement in regard to the matter was after we had defaulted six months on the bonds. I heard so in New York City. I saw that plan.

Q. Were you on there then?           A. Yes.

Q. Did you have any conference with anyone of them with respect to it?

A. I talked with Mr. Street, and it was shown to me.

Q. Well, at the time that this foreclosure suit was commenced who were the stockholders of this company?

(Testimony of J. J. Seymour.)

A. Of the San Joaquin Electric Company? Well, the control of it was in Fresno here. Mr. Eastwood and myself together owned a control of the stock. A very large block of it was held in Chicago and is now owned I think by the First National Bank.

Q. Was any of the stock owned by the bond-holders?

A. There was.

Q. Do you know about how much, Mr. Seymour?

Mr. EASTWOOD.—Very small amount.

The WITNESS.—I can't say offhand, but probably one-tenth or something like that.

Q. What is the amount of the stock outstanding of the company?

A. Eight hundred thousand less 10-790.

Q. You think about ten per cent of that was owned by the bondholders, but by different bondholders. Was that held in a block by the representatives of the company or was it distributed?

A. Our books show it was distributed. I may be in error as to the amount being one-tenth, but there was quite a considerable amount distributed.

Q. Do you know where this idea of the reorganization of the company originated?

A. I do not. When Mr. Street was here he outlined in a vague way some reorganization in which he proposed reducing the amount of the indebtedness, and after we saw him he went to England. It was while they were in England, I understand, that the plan was elaborated.

(Testimony of J. J. Seymour.)

Q. Mr. Street was here before your defalcation in the interest of January 1st, 1899, was he not?

A. No, I never saw him until after our first default actually occurred.

Q. Did he undertake to outline to you what the plan of reorganization was at all? A. No.

Q. Did he ask you to co-operate, anything of that kind?

A. No. He stated he was not empowered to do anything definitely. He was simply here finding out the condition of affairs so that he could go back and make a report.

Q. When did you first see this proposed plan of reorganization?

A. I saw that in New York City some time in July. That was after the six months' default, and I believe it was after the notice of, what do they call the term—

Mr. CORY.--Notice of demand for payment was made by the Mercantile Trust Company. Demand had been made. That was after the six months had expired.

Mr. WORKS.—Q. Were you asked at that time by Mr. Street or anyone else to go into that plan of reorganization?

A. He made a proposition to me that he would ask to have me appointed receiver if I would make no formal defense, or defense as a stockholder or as president of the company against the foreclosure proceedings, and I declined to do so. Afterwards he made a proposition that he would have the Mercantile Trust Company act,

(Testimony of J. J. Seymour.)

asking that I be appointed receiver if I would agree to conduct it on ordinary business principles, and so I went in with no obligation whatever, I went in as receiver with no—

Mr. CORY.—The only thing was that you would not charge more than a certain price?

A. Yes, my salary would not be more than a certain amount, providing the Judge granted me more than that as receiver. His idea was not to load it up with undue receiver's salary.

Mr. WORKS.—Q. Well, now was that matter of reorganization ever taken up and acted upon by the local stockholders here? A. It never was.

Q. Was any consent ever given by any of the local stockholders to that or any other plan of reorganization?

A. Not that I know of.

Q. How much of the stock did you own at that time?

A. I owned a little over one-fourth.

Q. How much did Mr. Eastwood own?

A. The same amount.

Q. And he and you together owned a controlling interest in the stock at that time? A. Yes, sir.

Q. And is that the condition at the present time?

A. It is.

Q. Now, in this proposed plan of reorganization that is made a part of the condition is this clause: "Fourth. One hundred thousand dollars of the capital stock will be issued to certain parties in Fresno for the water rights transferred by them to the old company, providing they

(Testimony of J. J. Seymour.)

facilitate the foreclosure of the mortgage." Do you know to whom that refers?

A. I presume that refers to Mr. Eastwood and myself.

Q. You were the parties referred to, interested in those water rights, were you? A. Yes, sir.

Q. Was that provision called to your attention at the time you had the consultation with Mr. Street?

A. Yes. I will state that when Mr. Street was here in March or April, Mr. Eastwood and I in conference with him, after telling him that we saw no means by which the foreclosure proceedings could be prevented, the finances of the company not materially improving and the floating indebtedness being so much, we submitted to him, as a matter of equity to put before the bondholders that we should be allowed, we asked that we be allowed some of the bonds of the new concern in case of reorganization. We asked it as a matter of equity. That was the talk in our talk with him while here, asking him to present that to the bondholders, as a matter of equity. We had devoted several years of our time here and had worked at a very low salary, put in all our time at it, and we considered it a matter of equity; we considered it a good concern and a matter of equity, we should have something in it along with the bondholders, and after he came back he said that was the best he could do in the matter. It was a matter of equity we presented it as all the time.

(Testimony of J. J. Seymour.)

Q. Well, then, this proposal in the plan of re-organization grew out of that claim of yours that you should be allowed something?       A. Yes.

Q. As a matter of equity?

A. Not on account of our rights as stockholders as much as our rights as individuals.

Q. What was the condition of these water rights referred to here at that time? Were you and Mr. Eastwood the owners of any water rights in your individual capacity at that time?

A. We had transferred them to the company and we had some rights up there, in reservoir sites, filings, etc.

Q. Then your proposition was that you would release whatever interest you might have in the way of water rights to the company, and, as a matter of equity as resulting from that, you should be allowed—

A. Well, not so much that as what we had already put into the concern.

Q. That you should have some interest in the capital stock of the new company if it was reorganized?

A. Yes, sir.

Q. Now, after you were appointed receiver of the company were there any further negotiations with respect to this plan of reorganization? Has it ever come up again?       A. No, it never has.

Q. And so far as you know, if a foreclosure should result and this property be sold, your interest would be lost entirely?

(Testimony of J. J. Seymour.)

A. I have no assurance, no legal assurance whatever that I will get anything out of it.

Q. Either in the way of capital stock in the new company if reorganized, or in any way?

A. No, sir.

Q. Have you any doubt, Mr. Seymour, but if an order of court was made for that purpose, that you should apply the surplus revenues of this company to the payment of the interest already accrued, that you could so conduct and manage this company as to pay this back interest and free it from the indebtedness for the interest?

A. And also the indebtedness—the other indebtedness?

Q. I mean the floating indebtedness, I don't mean the bond indebtedness?

A. Yes, I think the company should in a few years work out.

Q. Well, in a few years—as far as the interest is concerned upon these bonds, it could be done in a very short time with the earnings you are making now with the company?

A. I mean the interest, to take care of the interest and the floating debt.

Mr. CORY.—You mean all the accumulated interest?

Mr. WORKS.—Yes, the accumulated interest. What do you understand to be the amount of the floating indebtedness at the present time?

(Testimony of J. J. Seymour.)

A. At the time the company went into the hands of the receiver there was about \$85,000, somewhere about \$80,000, I think, due the General Electric Company, and probably five or six thousand dollars floating indebtedness, here about town. The bonds are out covering that.

Q. But, as I understand you to say, as far as the indebtedness to the General Electric Company is concerned, that indebtedness has been taken up?

A. Taken up by somebody.

Q. And that it is simply now represented by the bonds?

A. The parties that took it up have possession of the bonds.

Q. Has any claim ever been made on this company for that indebtedness as a floating indebtedness since it was taken up by the bondholders, if it was?

A. No, not that I know. I don't even know who holds it. There was some \$7,000 local indebtedness, about town, at that time, and since that time, of course, the receiver's certificates were issued.

Q. What is your judgment, Mr. Seymour, as to whether this property is or is not ample and sufficient security for the payment of those bonds?

A. Based on the present revenue capacity?

Q. Yes.

A. I think it is, were time allowed.

Q. And if the company were reorganized on the basis proposed in this plan and the bonds in that way



(Testimony of J. S. Eastwood.)

extinguished, this would be an excellent piece of property, would it not?      A. Yes.

Mr. WORKS.—I think that is all.

J. S. EASTWOOD, being called as a witness for intervenors, and being duly sworn by the Special Examiner, now testifies as follows:

(By Mr. WORKS.)

Q. What is your name?

A. John S. Eastwood.

Q. What is your occupation?

A. Civil engineer and superintendent of the Electric Company.

Q. How long have you been connected with the Electric Company?      A. Since its inception.

Q. What connection have you had with the company?

A. I have had that same connection with the company since its organization.

Q. Are you also a stockholder of the company?

A. I am.

Q. To what extent?

A. I have something over one-fourth interest.

Q. Have you held that amount of stock since its organization?      A. Yes, sir.

Q. Who has had charge of the construction work and mechanical work done by the company since its organization?      A. I have.

Q. Of what does the property consist, speaking in a general way?

(Testimony of J. S. Eastwood.)

A. It consists generally in water rights in the North Fork of the San Joaquin river, the diversion works, storage reservoirs, of which there are two completed and another under way, pipe line, power-house, transmission line, sub-station, and machinery and distributing system in the city of Fresno.

Q. What connection has the Electric Company with the Fresno Water Company?

A. The Electric Company is the owner of the Fresno Water Company.

Q. And the two are operated together, that is, by the same force of employees?

A. Yes. The employees are kept separate.

Q. You keep the accounts of the two separate?

A. Yes, sir.

Q. But they are really owned by the same persons?

A. Yes, sir.

Q. What additions have been made to the system of the company since the defalcation of the company in its interest the first of the year 1899, speaking in a general way?

A. The storage reservoir known as Chilcoot Lake has been built, a large amount of work has been done on the Crane Valley storage reservoir, and quite considerable extension has been made in the city of Fresno in the distribution system.

Q. What have these additions cost, in round numbers?

(Testimony of J. S. Eastwood.)

A. It would be pretty hard to get at that exactly. The books will show.

Q. Can you say something near the amount, according to your recollection?

A. Yes. Chilcoot reservoir was in the neighborhood of \$3,500, Crane Valley reservoir has cost in the neighborhood of \$20,000. I have not the item of the other extensions.

Q. What was the occasion and necessity of these additions to the system?

A. The necessity for an additional water storage was the recurring dry years that cut off the water supply, necessitating storage to augment the supply; and the extension of the city distribution system was in the nature of a completion of the distributing plant.

Q. I understand one of these reservoirs is only partially completed?      A. Yes, Crane Valley.

Q. Why is it it has not been entirely completed?

A. We were enjoined from proceeding with the work by the United States Government and are awaiting permission from the Department.

Q. Are steps being taken to obtain the necessary consent of the Government to complete the work?

A. Everything that could be possibly done has been done to facilitate the acquisition of the permit.

Mr. CORY.—A portion of it was in the forest reserve.

Mr. WORKS.—Q. Well, what may be said to be the present prospect of being able to get that permit?

(Testimony of J. S. Eastwood.)

A. There seems to be very little in the way at the present time.

Q. Is it the purpose to go on and complete the work when that permit is obtained?      A. Yes, it is.

Q. What will probably be the cost of completing the dam and reservoir?

A. Possibly in the neighborhood of \$15,000 more.

Q. Is that the one that has already cost you \$20,000?

A. Yes, sir.

Q. And the total cost you estimate will be about \$35,000?      A. Something in that neighborhood.

Q. What will be the effect of that, Mr. Eastwood, as adding to the value and efficiency of the entire system?

A. Well, it will make the plant absolutely independent in the matter of water. It will provide sufficient water for any emergency for any year.

Q. What was the effect of the shortage of water upon the earning capacity of your plant without these facilities for storage?

A. The revenues were almost entirely cut off during the months of August and September, in those two years in succession.

Q. Were they affected during any of the balance of the year?      A. No, not appreciably.

Q. Then with those facilities added the company would be independent and would be enabled to increase its system, distributing system?

A. Yes. I might state that there are a great many large consumers of power that have refused absolutely

(Testimony of J. S. Eastwood.)

to patronize us unless they are assured that the current will be supplied and continuously, which the storage reservoirs will give us a chance to assure.

Q. What is your judgment as to whether you would have been enabled to meet the obligations of the company for its interest if it had not been for the extreme drouth that you passed through?

A. I think we could have met our obligations.

Q. What is your judgment as to the ability of the company now, if a reasonable time and opportunity is given, to meet the interest and keep itself afloat?

A. With its present revenue and the revenue that it can readily take on as soon as it has additional machinery to carry it, it will be amply able to take care of all its obligations.

Q. It has been shown here that the company has increased its rates. Are the rates that prevail now reasonable rates and such as you think can be maintained?

A. They are moderate rates and lower than in many other cities in the state.

Q. What was the reason for your charging the lower rates before this increase was made?

A. The reason was that we were newcomers in the field and in competition with another company that was furnishing gas, and that necessitated our starting with low rates in order to acquire business at all.

Q. With these new and additional rates, do you find that that is any obstacle to the increase of your business?

(Testimony of J. S. Eastwood.)

A. It has been no obstacle to the increase of the business as our plant is still loaded up the same as it was before the change in the rates.

Q. Are you able to state how your rates for lighting compare with the rates for lighting by gas?

A. Well, in some cases they are about equal at the present time with the rates for gas at two dollars a thousand, in other cases they are probably a little lower.

Q. Well, on an average how would the rate be with the price of gas?

A. Well, it would probably average about equal with the price of gas at the present rates.

Q. Now, has your increase in rates been for lighting only or has it been for power?

A. Been for lighting only.

Q. You have made no increase in your rates for furnishing power?      A. No, we have not.

Q. Could your rates for furnishing power be increased without detriment to the business of the company do you think?

A. They might be, yes, in a number of instances.

Q. What is your judgment as to whether this property is ample and sufficient security for the payment of these outstanding bonds?

A. With the showing of the revenues, it is quite ample security.

Q. When did you first hear of this proposed reorganization of the company?

A. I think it was sometime in August, 1899.

(Testimony of J. S. Eastwood.)

Mr. SEYMOUR.—July, when I was in New York, July.

The WITNESS.—July, 1899.

Mr. WORKS.—Q. Do you know who that proposition came from? A. No, I do not.

Q. How did you first learn of it?

A. I learned of it from Mr. Seymour.

Q. Did you have any talk with Mr. Street about that when he was here?

A. No, not when he was out here on his first trip.

Q. Were you invited to join in that plan of reorganization? A. No, I was not.

Q. You knew of the clause in that proposition with respect to allowing someone in Fresno a hundred thousand dollars of the capital stock, did you?

A. Yes, I knew of it.

Q. Did you know who that referred to?

A. I suppose it referred to us but I never heard it said.

Q. Was there anybody else so situated that it could have reference to them that you know of?

A. I don't know of anyone else, no.

Q. When you learned of the proposed reorganization did you learn of that feature of it from Mr. Seymour?

A. Yes, sir.

Q. Was any consent ever given by you to the reorganization of the company under any terms?

A. None whatever.

Q. Do you believe, yourself, that there is any reason or necessity for the reorganization of the company?

(Testimony of J. S. Eastwood.)

A. I do not.

Q. Do you know, Mr. Eastwood, whether the condition of things and the reason for your inability to meet the obligation of the company on account of the extreme drought was ever explained to the bondholders?

A. I don't believe that it ever was.

Q. Well, do you know whether since the foreclosure suit was commenced any effort has been made to apprise them of the present condition and probabilities of the company being able to meet its obligations and pay the interest on the bonds?

A. No. I don't think anything has been done in that line, to my knowledge.

Q. What connection have you had with the company under the receivership?

A. The same as before, superintendent and engineer of the company.

Q. The management of the company has continued practically the same as it was before with the simple change from the presidency to the receivership by Mr. Seymour, hasn't it?

A. Yes, sir.

Q. With respect to this Hanford extension, that is more than paying its own way?

A. It is, yes, sir.

Q. That is to say, it is paying the interest upon indebtedness and paying something upon the principal each month?

A. Yes, sir.

Q. Is Mr. Seymour's statement as to the amount that is paid each month substantially correct?

A. It is. They are paying \$600 per month.



(Testimony of J. S. Eastwood.)

Q. And as the interest charge grows less the amount paid on the principal increases each year.

A. It does.<sup>s</sup>

Q. What rate of interest is being paid on that indebtedness?      A. Ten per cent.

Q. With respect to these items of floating indebtedness that are outstanding, if the Court should be disposed to make an order that the revenues of the company be applied to the payment of the interest on the bonded indebtedness, would there be any difficulty probably in carrying that floating indebtedness along without its actual payment?

A. It is not very large. I don't know that there would be.

Q. What is the extent of it?

A. Well, I don't know at the present time.

Q. Could you give us something near, outside of this—

Mr. SEYMOUR.—I think, outside of the General Electric Company—

The WITNESS.—Something like \$5,000.

Mr. SEYMOUR.—Seven thousand dollars, I think I stated, something in that neighborhood.

The WITNESS.—It is mostly salaries.

Mr. WORKS.—I want to get, as nearly as I can, the condition of the indebtedness, because I may feel disposed to ask the court to make an order to apply these funds and pay up this back interest.

(Testimony of J. S. Eastwood.)

Mr. SEYMOUR.—If you can leave this, we will look it up.

Mr. CORY.—They can give it to you in a short time.

Mr. SEYMOUR.—So that the stenographer can insert it in his notes. If it is any object, I will look through the list of stockholders, if you want to know definitely about the English bondholders, I can tell.

Mr. WORKS.—I might ask that question of Mr. Eastwood now. I wish you would state what amount of stock is owned now by the bondholders of the company.

Mr. SEYMOUR.—We were informed that they were given out in the sale of bonds and we presume they are in the hands of the bondholders.

The WITNESS.—About \$56,000 of the stock is held in England. However, there is not any of it in the name of the people that we suppose to be the present bondholders.

Q. You don't know then whether the bondholders hold any of the present stock of the company or not?

A. No.

Mr. CORY.—At the par value? A. Yes.

Mr. SEYMOUR.—Our stock book shows there is that much stock in the name of English holders. They may be in this country for all we know.

Mr. WORKS.—Q. What is the par value of the stock?

A. One hundred dollars a share.

Mr. CORY.—A hundred dollars a share.

(Testimony of J. J. Seymour.)

Mr. SEYMOUR.—They own pretty near one-fifteenth of it.

Mr. WORKS.—Well, I think that is all I want to ask Mr. Eastwood.

The further taking of testimony herein was here continued until 2 o'clock this afternoon.

Afternoon.

Mr. WORKS.—I want to ask Mr. Seymour a few more questions

J. J. SEYMOUR, recalled for intervenors for further examination, testified as follows:

Mr. WORKS.—Q. What attorneys, if any, has the Electric Company employed to defend this action?

Mr. CORY.—Bicknell, Gibson & Trask, of Los Angeles.

Mr. WORKS.—Q. What, if anything, have they been doing for and on behalf of the company with respect to the present contention of the intervenors in their efforts to prevent the foreclosure of this mortgage?

A. Simply an attitude of lookers-on.

Mr. CORY.—They have put in an answer, that is all. I will simply state that they have appeared and answered to the complaint in intervention.

The WITNESS.—Mr. Cory attended to that.

Mr. WORKS.—Q. They have not, so far as you know,

(Testimony of J. J. Seymour.)

taken any active part in any litigation that has been going on so far in the matter?      A. No.

Q. Have they attended any of the sittings for the taking of testimony?      A. No.

Q. On this question, so far as you know?

A. No.

Q. Are you still the president of the Electric Company?      A. Yes.

Q. Was the employment of attorneys to represent you by you personally or through someone else?

Mr. CORY.—Through me.

The WITNESS.—Through someone else.

Mr. WORKS.—Q. Have you yourself given them any instructions to make any defense of the suit itself or of these proceedings of the intervenors to prevent the foreclosure of the mortgage?

Mr. CORY.—Nothing except that is shown by the record.

The WITNESS.—Nothing except what is shown by the records, the answer.

Mr. WORKS.—I guess that is all.

J. M. COLLIER, recalled for intervenors for further examination, testified as follows:

Mr. WORKS.—Q. Did you make out the statement of account that you were requested to make?

A. Yes, sir.

(Testimony of J. M. Collier.)

Q. Is this the account as you have made it (exhibiting paper to witness)? A. Yes, sir.

Mr. WORKS.—We offer this as Intervenors' Exhibit, letter "E."

(Offer marked Intervenors' Exhibit "E," and hereto appended.)

Q. You have included in the statement for 1897 bond interest \$31,150. That is the interest that Mr. Price testified he left out of his statement?

A. I don't know that. I don't know that you had any testimony to that effect. It was evidently left out.

Q. What, say?

A. It was left out of his statement.

Q. The report that he furnished accompanying the statement showed that he left that out entirely. Then you have in this account, construction \$43,495.64. Was any part of that paid out of the proceeds of the bonds?

A. That is '97?

Q. That is '97, yes, sir.

A. I will look and see whether there was. I think it was.

Q. Well, it must have been, I presume. You had not money enough from the earnings to pay it did you?

A. No, sir.

Q. Either it was paid out of the money realized from the bonds or you borrowed it somewhere else?

A. That was the condition exactly.

Q. Now, in the following year, 1898, you have an

(Testimony of J. M. Collier.)

item of Repaid, Loans, \$14,671.62. Was that money that you had borrowed for the year 1897?

A. Yes, sir.

Q. And you have in this year Construction, \$16,522.21. Do you know where the money came from to pay that?

A. That was money borrowed.

Q. Then so far as your construction is concerned, you kept borrowing and repaying and borrowing again?

A. Yes, sir.

Q. This construction account of \$16,522.21, could you tell whether that was a part of the expenditures included in Mr. Price's account?      A. That is '99, is it?

Q. That is '98.

A. In his statement he has no construction.

Q. Not in that way, but he has a statement of the expenditures. The question is whether that will cover it?

A. He has in his statement, fuel, salaries, sundry expenses and taxes, power, or current, but no construction.

Q. The question is whether any of those would cover that amount?

A. No, sir, they will not.

Q. That is in addition to anything that is contained in his account, is it?      A. No, sir.

Mr. CORY.—You mean "Yes, sir." He says it is in addition?

Mr. WORKS.—Q. That is in addition to what is included in his account, is it?

A. That is construction on that statement. It is in

(Testimony of J. M. Collier.)

addition to what is included here (referring to Intervenor's Exhibit "A.")

Q. Then with the exception of the amount of construction that you have set out here and the loans that have been repaid, your account corresponds with that of Mr. Price, doesn't it?

A. Well, I have not verified it, but it should; yes, sir.

Q. Those are the only two items that you think there is any discrepancy about?

A. That he has left out, yes, sir.

Q. Then you have in the year 1899, construction \$3,437.10, and repaid on loans, \$26,340.11. That so far as the loans are concerned is the same as in the other case, you borrowed at times and repaid at times?

A. Yes, sir that is what that represents, repaid loans previously borrowed.

Q. Have you included those amounts derived in that way, as loans, as a part of your credits, your receipts?

A. Well, it was a receipt, of course, but it is not included in the current receipts, the power receipts.

Q. In giving the credit side of your account you have the actual earnings of the company and not what is borrowed? A. The earning is credited separately.

Q. In making this account you have not carried into the credit side of the account anything except the actual earnings or receipts of the company, \$41,491.11, for example, in '97. That is the actual amount earned by the company?

A. Actual gross earnings of the company; yes, sir.

(Testimony of J. M. Collier.)

Q. Not what was borrowed?

A. That does include, I don't know, in that case, but in the last two years, '98 and '99, it includes some lamps sold.

Q. But that is the total amount received, not from borrowed money?      A. No, sir.

Q. Then you include the money borrowed, or the money paid to refund the money borrowed as a part of your debit account and have not carried it into the credit side of the ledger at all in making this account?

A. I don't believe I understand.

Q. Well, here is an item of Repaid Loans, \$14,671.62 that you have charged against the company on the debit side?      A. Yes, sir.

Q. You have not credited that on the credit side of the account at all, when it came into the funds of the company?

A. I don't know as I understand the question the way you put it.

Mr. CORY.—He wants to know how that is offset on the credit side? Was there any credit given for that? That is what he means.

Mr. WORKS.—As you make your statement it is not put on the credit side at all?

A. No, sir, no, no, it is not. The deficit in each of those cases represents about the amount borrowed during that year you see.

Q. But the amount of money that you have borrowed,



(Testimony of J. M. Collier.)

that you have given yourself no credit for at all, has gone into the construction account? A. Yes, sir.

Q. That you also charge against the account and give no credit for?

Mr. CORY.—Excuse me a minute. Don't you keep any account of money that you get from other sources besides—

A. Yes, sir, certainly.

Mr. SEYMOUR.—This is not a balance sheet, and in that case, he has overlooked that.

Mr. WORKS.—I am trying to show a discrepancy in this account. Here is an item of some \$16,522 that has gone out. Well, that has come in, too, and, although borrowed money, it should be on the credit side of the account, so as to even up, because that \$16,522 is in addition to the other receipts of the company.

The WITNESS.—He shows—Mr. Price—net earnings of so much, for instance in '98 he shows net earnings of \$3,270, but he leaves out construction.

Mr. WORKS.—Simply because he leaves out, also, the credit of the amount that comes in which is in addition to the property of the company, its assets?

A. Yes, sir.

Q. His manner of keeping it is the correct one, and not yours, if you want to get at the exact condition of the account?

A. Yes. I see what you mean. Well, all moneys

(Testimony of J. M. Collier.)

borrowed were entered up to the credit of parties, and when paid out of course they were charged up with it.

Q. Yes, I understand that, but that is their individual account, not the account of the company itself. In those figures where you charge the company up, in reaching this result, you charge it up with loans repaid, \$14,672.62, and you give it no credit at all for the amount received upon those loans, so the account is certainly not correct in that form?

A. I started out seeing it another way.

Mr. CORY.—How is that, Mr. Seymour? There certainly must be a credit there.

Mr. SEYMOUR.—He has undertaken to condense—

Mr. WORKS.—The trouble is, he has only condensed on one side of the house.

Mr. SEYMOUR.—His statement covers three or four sheets, and he has tried to get it in the shape Mr. Price has it.

Mr. JOHNSON.—The Judge's contention is, that must be receipts, all money borrowed.

The WITNESS.—Now you take that. It is simply another form of making it. There is '97. I have the credit in that (handing paper to Mr. Works). It is simply another way of making it out. This deficit shows the amount. Of course it is credited. If you add in the amount borrowed, it balances the account.

(Testimony of J. M. Collier.)

Mr. CORY.—What he wants is a statement showing all the receipts, from every source in the world and all the disbursements and charges of every kind, and that will show the balance if there is any.

Mr. SEYMOUR.—That is the form, and he undertakes to condense it and he don't show what the Judge wants him to show. Of course we never had such a deficit you know.

The WITNESS.—These amounts borrowed should appear above there under the head of receipts. That is what would be a correct way of making it, but I thought you preferred—

Mr. SEYMOUR.—That form there is what he wanted.

Mr. WORKS.—You said there were some discrepancies between your books and Mr. Price's account; upon the basis of actual earnings and actual expenditures that I think shows probably the correct result. You have incorporated in this construction and money paid for repayment of loans and other things without giving the other side of those same items, which of course makes it one-sided; and, of course, it is not to your interest to show it in that form, or mine either, or anybody else's that I know of.

The WITNESS.—I can make it in another form.

Mr. CORY.—What he wants is all the receipts, from any source, and all the disbursements, so as to show how much it ran behind for any one year, or how much you made any one year.

(Testimony of J. M. Collier.)

Mr. SEYMOUR.—One error Mr. Price made—I don't know where he got it—big error—was in '99, he has the receipts \$54,000. It is not on the books.

The WITNESS.—Forty-eight thousand dollars—less, in '99.

Mr. CORY.—Mr. Price has it 54.

Mr. CORY.—Haven't you got an annual statement that shows the whole thing? Can't you read that off?

A. Yes. For instance, here—

Mr. CORY.—Annual statement for the year 1897?

A. 1897. Now, if you will permit me to read this.

Mr. CORY.—Read it off. Let us hear it. It shows money borrowed and everything, don't it?

A. Cash receipts—cash on hand January 1st, 1897.

Mr. CORY.—1898 we want, January 1st, 1898. We want your annual statement.

A. You want the statement for 1897?

Mr. CORY.—Yes, for the year 1897.

A. January 1st, 1897. That is where they start out.

Mr. WORKS.—That is right. Amount on hand—

A. Ninety-six dollars and fifty-four cents. Receipts from current for power and lights, \$41,394.57; from individuals and other sources \$58,127.01. Now I can, of course, tell who those individuals are. Now, disbursed for salaries, supplies, expenses and repairs, under one heading—I can give you the segregation of that if necessary—\$22,335.89.

Mr. JOHNSON.—It is a little different here in the statement.

(Testimony of J. M. Collier.)

A. Mistake in copying. Interest on bonds, \$31,150; taxes, \$1,542.56; interest—that is on small loans—\$668.77; personal property, real estate, etc.—that does not exactly apply to the operating expenses—I suppose it does, too. The personal property is a horse or two I bought, I think it is; and some real estate we bought up there, \$380.60; construction, extensions and improvements, \$43,495.64.

Mr. SEYMOUR.—Does that give the balance now—leaves a cash balance of what amount?

A. Forty-five dollars and sixteen cents and the two amounts balance.

Mr. JOHNSON.—That makes a deficit as it stands here.

The WITNESS.—I have a statement of that kind, Judge, for every year and for every month, as far as that is concerned.

Mr. SEYMOUR.—Now, then, hadn't you better give off the next year?

Mr. CORY.—Whatever the Judge wants.

Mr. WORKS.—If he had it made out in a written statement, that would be better. You can do it at any time and the Examiner can attach it to the report.

The WITNESS.—I can just have that copied.

Mr. WORKS.—Intervenors withdraw their Exhibit "E."

(Testimony of J. M. Collier.)

Mr. CORY.—Then don't you want to substitute for that copy of the annual statement of the company for the years 1897 and 1898.

Mr. WORKS.—Suppose you strike out all about that and ask him to supply the other and mark it "F."

Mr. CORY.—Exact copy of that for '97, '98, and '99 one for 1900 too.

Mr. WORKS.—Yes, better put it all in. Better not withdraw that, but supply the other and mark it "F." Did you want to examine any of these gentlemen now?

Mr. SEYMOUR.—Was that matter of the betterment account of the water company—the Judge said they would enter into that later on. In that statement of the water company's receipts and expenditures for those three years there was no mention made of the betterment account for those years.

Mr. WORKS.—Well, that is not material in this investigation.

Mr. SEYMOUR.—That would wipe out that \$12,000 surplus.

Mr. WORKS.—Well, we don't care about going into that.

Mr. CORY.—It simply shows there was not the surplus on hand.

Mr. WORKS.—The evidence shows whatever there was used by the electric company, and this account shows just what the electric company used. I don't see that it is material.

(Testimony of J. J. Seymour.)

(Operating Statements for the year 1897 and 1898 and Annual Statements for the years ending December 31st, 1899, and December 31st, 1900, of defendant herein, furnished to Examiner by the witness Collier in pursuance of understanding hereinbefore set forth, are hereto appended, marked Intervenors' Exhibit "F.")

JOHN J. SEYMOUR, recalled for cross-examination, testified as follows:

Mr. CORY.—Q. Has there ever been, Mr. Seymour, any surplus revenues from the Electric Company since it has been established? A. No.

Q. And have there been during the years the Electric Company was doing business any surplus revenues from the Water Company after payment of all expenses, betterments and payments of that kind?

A. Well, no.

Q. As I understand you, the Electric Company never paid the Water Company any interest on any of its indebtedness or money that the Electric Company borrowed of the Water Company? A. No.

Q. You have seen these accounts as prepared by Mr. Price from the books of the company? A. Yes, sir.

Q. Do those statements show the exact condition of the company, and if not in what respect do they not, as you remember it?

A. Well, they show for each year a surplus, which would seem to indicate that there was so much accumulation over and above the operating and constructive ex-

(Testimony of J. J. Seymour.)

penses, but as a matter of fact at the end of each year—at the end of the year the books indicate that we didn't have that amount.

Q. Have you ever had any surplus at all?

A. Well, when we paid interest there were generally, before the time of interest paying we accumulated some money.

Q. Enough to pay your interest? A. Yes, sir.

Q. Well, do you know why it is that those statements show a surplus, what should be charged which the statements do not show?

A. I presume it is because it does not take into account all the items of construction.

Q. And improvements, the money that you have expended in bettering the plant?

A. Bettering the plant.

Q. And extending its service?

A. At the time those improvements began we were only partially constructed. We had the current into town, to be sure, but the town was not properly wired, and the plant was not finished at the upper end. There was construction practically going on all along the line.

Q. As I understand it, these amounts expended for construction do not appear in Mr. Price's statement?

A. No. That seems to be where the discrepancy is between his statements and ours.

Q. Mr. Collier has been your bookkeeper and secretary, has he, all these years? A. He has.



(Testimony of J. J. Seymour.)

Q. And he has given the matter attention, has he, the matter of keeping the books?

A. Yes, sir.

Q. Have you had any particular charge of them?

A. No, except—

Q. General supervision? A. Supervision.

Q. You know from your own experience and knowledge that those books have been kept correctly, do you not?

A. I do. He makes statements from time to time.

Q. And you know those statements are correct?

A. Yes, sir, according to his theory of book-keeping.

Q. Mr. Price's statement, as I understand it, is under different headings of expenditures and receipts than those adopted and carried through the books by Mr. Collier? A. In some cases, yes, sir.

Q. So it is very difficult to segregate the different items and make the two statements correspond?

A. Yes. In some particulars they are identical, a good many, but there are discrepancies.

Q. Now, about what was the condition of the company with reference to its debts over and above its assets on the 1st of January when you defaulted in your interest in round numbers?

A. I couldn't state that, Mr. Cory. I will merely state that we had no funds on hand to make the interest payments, nothing like, and by no manner of financing could we collect enough.

Q. What efforts if any did you make towards getting the amount of money to pay your interest?

(Testimony of J. J. Seymour.)

A. I had exhausted my credit the six months previously. I had to borrow extensively then on my own personal assurance of repayment. Immediately following that, came the big, bad year.

Q. The drought?           A. The drought—dry year.

Q. That had an effect, I presume, to injure your credit, as well as cutting off your revenue?

A. Yes, sir, and also that year increased our expenses materially, because we tried to carry certain contracts here in town in which we not only did not get payment but we paid out money additional, so that our expenses were even greater than they had been running.

Q. And all those causes working together prevented you from raising the money?

A. Prevented us from even trying to do anything the 1st of January.

Q. Well, since that time, particularly in the past two years, the condition of the company has been getting very much better, has it not?           A. Decidedly better.

Q. So that at the present time your receipts are very largely in excess of your expenditures?           A. Yes, sir.

Q. And, in fact, the company is in such condition now that if this litigation were ended you could go on and pay your interest and be a going concern, without difficulty, you think?           A. I think so.

Q. Now the water company, you have always kept that separate, the accounts of the water company and the electric company?           A. Yes, sir.

(Testimony of J. J. Seymour.)

Q. The officers of the company are the same except of course some of your employees are different?

A. Yes.

Q. The water company, you borrowed considerable money of it, did you not, for the purpose of making payments on the bonded indebtedness, or interest on the bonded indebtedness of the electric company?

A. Yes; whenever we—

Q. And this 1st of January, 1898, you couldn't borrow any more money of the water company, could you, because it didn't have any more than enough money to pay its own interest on bonded indebtedness?

A. Yes.

Q. In other words, it had become almost crippled, had it not, by reason of large advances to the electric company?

A. The water company had become crippled. The water company is now in the position of being partially defaulted on its bonds by reason of the attempt to bolster up the other company. We have attempted in the past year to help the water company back to its basis of paying its bonds at the prescribed time, and we have not exactly done so at present.

Q. And that condition has been occasioned because of the attempt of the water company to assist the electric company?

A. Assist the electric company.

Q. And a large amount of money it did actually loan to it as shown by the statements? A. Yes, sir.

(Testimony of J. J. Seymour.)

Mr. CORY.—I think that is all.

Mr. WORKS.—Q. Did you at any time furnish an account of the condition of the electric company to the Municipal Investment Company, or to Mr. Coffin of that company?

A. We furnished them with monthly statements, Judge, up to a certain period. I can't at present state when that was.

Q. Well, did you furnish them, in addition to your monthly statements, did you furnish them a full statement and account of the condition of the company, at any time? A. I presume we did.

Q. Well, did you keep copies of whatever you did furnish them?

A. No; I don't think we did, as a general thing, because they would be taken from the books; and if it was a question of revenue for the existing year or the year succeeding we would estimate what the increase of revenue should be, and all that.

Q. Well, whatever statements you made to the Municipal Investment Company or to Mr. Coffin were correct statements from your books, were they not?

A. So far as the books showed, yes, sir.

Q. Well, they were correct transcripts from your books? A. Yes.

By stipulation of counsel appearing at the hearing, the signing of the testimony by the witnesses is waived.

Intervenors' Exhibit "A."

Statement of Earnings and Expenses of The Fresno  
Water Company, for the years 1897-8-9

1897.

Earnings:

Received from consumers.... .		\$47,601.20
Operating Expenses		
Fuel..... .	\$2,914.58	
Salaries.. . . .	7,607.45	
Sundry expenses and taxes..... .	8,409.43	
Power..... .	6,000.00	
Interest.... .	257.80	25,189.26
		<hr/>
Net earnings: . . . . .		22,411.94
Interest on bonds.. . . .		19,500.00
		<hr/>
Surplus for 1897.... .		2,911.94

1898.

Earnings:

Received from consumers.. . . .		\$48,913.77
Operating Expenses		
Fuel..... .	4,836.90	
Salaries..... .	7,637.20	
Sundry expenses and taxes.... .	7,079.65	
Power..... .	6,000.00	
Interest..... .	589.40	26,143.15
		<hr/>
Net earnings:.... .		22,770.62
Interest on bonds.. . . .		19,500.00
		<hr/>
Surplus for 1898.... .		3,270.62

1899.

## Earnings:

Received from consumers.... .		48,626.19
Operating Expenses		
Fuel.... .	1,049.82	
Salaries.... .	7,863.65	
Sundry expenses and taxes.. . . .	7,447.94	
Power..... .	4,500.00	
Interest..... .	338.20	21,199.61
		<hr/>
Net earnings:..... .		27,426.58
Interest on bonds..... .		19,500.00
		<hr/>
Surplus for 1899..... .		7,926.58
Intervenors' Exhibit "A." J. W. G.		

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 Intervenors' Exhibit "B."

 Statement of Earnings and Expenses of San Joaquin  
 Electric Company for the Years 1897, 1898 and 1899.

1897.

Received from consumers... .		\$41,520.84
Operating Expenses		
Salaries... .	\$14,374.10	
Supplies.... .	3,358.81	
Expense..... .	5,281.76	
Repairs.... .	2,714.62	
Power-house expenses.. . . .	3,001.50	
Substation.... .	853.53	
Interest.... .	1,057.72	30,642.04
		<hr/>
Net earnings:..... .		10,878.80

1898.

Receipts.....		38,105.90
Operating Expenses		
Salaries.....	14,787.60	
Supplies.....	1,118.19	
Sundry expenses.....	6,572.87	
Interest.....	1,453.75	23,932.41
	<hr/>	<hr/>
Net earnings:..		14,173.49

1899.

Receipts.....		54,415.74
Current.....	\$54,057.40	
Net from Mdse.....	358.34	
	<hr/>	

Operating Expenses

Salaries..	15,168.50	
Supplies.....	815.22	
Sundry expenses..	6,173.44	
Interest.....	1,316.22	
Repairs.....	985.08	24,458.46
	<hr/>	<hr/>
Net earnings:..		29,957.28

Intervenors' Exhibit "B." J. W. G.

Intervenors' Exhibit "C."

Statement of Resources and Liabilities of San Joaquin  
Electric Company, December 31, 1899.

Resources:

Due from First Nat.			
Bank of Fresno .	248.58		
Property.. . . . .	2,157.45		
Permanent improve-			
ments.. . . . .	800,000.00		
Fresno Water Co.			
stock . . . . .	165,000.00		
Profit and loss a-c. . .	9,979.04		
Bonds on hand. . . . .	31,000.00		
Real estate. . . . .	1,074.51		
Hanford extension . .	34,865.26		
Bond interest. . . . .	36,750.00		
Construction . . . . .	363,990.06		
Water storage. . . . .	2,634.18		
Due from sundry indi-			
viduals:			
Fresno Agr. Works ..\$	17.44		
Fresno Water Co. . . .	1,164.60		
J. M. Howells, Trus-	2,000.00		
tee. . . . .	2,000.00		
J. J. Seymour, Re-			
ceiver . . . . .	638.95		
J. M. Howells. . . . .	250.00		
E. F. Tulley. . . . .	10.00		
San Joaquin Mining			
Co. . . . .	191.45	4,272.44.	1,451,971.52



Liabilities:

Capital stock . . . . .	790,000.00	
Bonds payable . . . . .	555,000.00	
Bills payable . . . . .	5,249.98	
Mercantile Trust Co. due Sep. 1, '99...	36,750.00	
H. G. Lacy Co.....	26,909.05	
Receiver's certificates outstanding . . . . .	8,000.00	
Fresno Water Co....	19,578.19	
Due to sundry indi- viduals.. . . . .	10,484.30	1,451,971.52

Intervenors' Exhibit "C." J. W. G.

Intervenors' Exhibit "D."

Statement of Resources and Liabilities of Fresno Water Co., Dec. 31, 1899.

Resources:

Real estate.... . . . .	\$ 20,660.25	
Permanent improvements . . . . .	632,758.00	
Treasurer.. . . . .	2,768.58	
Franchise.. . . . .	5,000.00	
San Joaquin Elect. Co... . . . .	19,578.19	\$680,765.02

Liabilities:

Capital stock.. . . . .	325,000.00
Bond a-c..... . . . .	325,000.00
Profit and loss..... . . . .	14,975.42

Ill. Trust and Sav. Bank... ..	14,625.00	
J. J. Seymour, Receiver.....	1,164.60	680,765.02

Intervenors' Exhibit "D." J. W. G.

Intervenors' Exhibit "E."

SAN JOAQUIN ELECTRIC COMPANY.

1897.

Receipts:

Balance.. . . . .	96.54	
Power or current . . . .	41,394.57	41,491.11

Operating Expenses

Salaries, supplies,

Taxes, repairs, etc. . . . \$23,878.45

Interest.. . . . . 668.77

Personal property real .

estate.. . . . . 380.10 24,927.32

Bond interest.. . . . . 31,150.00

Construction.. . . . . 43,495.64 74,645.64 99,572.96

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Deficit 58,081.85

1898.

Receipts:

Balance.. . . . . 45.16

Current and lamps

sold.. . . . . 38,999.32 39,044.48

Operating Expenses

Ex. interest and taxes. 8,026.62

Salary..... 14,787.60

Carbons.. . . . .	1,118.19		
Personal property and real estate.... . . .	141.30	\$24,073.71	
<hr/>			
Bond interest.. . . . .	15,750.00		
Construction.. . . . .	16,522.21		
Repaid loans, etc.... . .	14,671.62	46,943.83	71,017.54
<hr/>			
Deficit			\$31,973.06
Intervenors' Exhibit "E." (1) J. W. G.			

SAN JOAQUIN ELECTRIC COMPANY.

1899.

Receipts:			
Balance.. . . . .		1,188.35.	
Current and lamps sold.. . . . .		47,952.21	49,140.56
Operating Expenses			
Salaries.... . . . .	17,890.95		
Supplies, lamps, etc.. . .	3,516.92		
Carbons, etc.... . . . .	973.37		
Ex., taxes and interest.	7,028.15.	29,409.39	
<hr/>			
Construction.. . . . .	3,437.10		
Water storage and con- struction... . . . .	5,457.76	8,894.86	
Repaid on loans. . . . .		26,340.11	64,644.36
<hr/>			
Deficit			\$15,503.80
Intervenors' Exhibit "E." (2) J. W. G.			

## Intervenors' Exhibit "F."

## OPERATING STATEMENT FOR THE YEAR 1897.

Cash Receipts:		
Cash on hand Jan.		
1st, 1897.....		\$96.54
Receipts from cur-		
rent for power		
and lights. . . . .		41,394.57
From individuals		
on account and		
other sources . . .		58,127.01
Disbursements:		
For salaries, sup-		
plies, expenses		
and repairs . . . . .	\$22,335.89	
Taxes . . . . .	1,542.56	
Interest. . . . .	668.77	
Personal property		
and real estate ..	380.10	24,927.32
		<hr/>
Interest on bonds..	31,150.00	31,150.00
Construction, exten-		
sion and improve-		
ments . . . . .	43,495.64	43,495.64
Balance . . . . .	45.16	45.16
		<hr/>
		\$99,618.12 \$99,618.12

OPERATING STATEMENT FOR THE YEAR 1898.

Receipts:		
Balance on hand		
Jan. 1st, 1898....		\$45.16
On account current		
sold .. . . .	\$37,432.28	
Mdse sales, etc. ...	1,567.04	38,999.32
	<hr/>	
From banks, etc...		33,161.41
Disbursements:		
Expense, interest		
and taxes . . . . .	\$8,026.62	
Salary . . . . .	14,787.60	
Carbons . . . . .	1,118.19	
Bond interest . . . .	15,750.00	
Property and real		
estate . . . . .	141.30	
Construction, bet-		
ments, etc... . . .	16,522.21	
Paid on account,		
etc. . . . .	14,671.62	
Balance . . . . .	1,188.35	
	<hr/>	
	\$72,205.89	\$72,205.89

Intervenors' Exhibit "F" (1). J. W. G.

ANNUAL STATEMENT FOR THE YEAR ENDING  
DECEMBER 31st, 1899.

Receipts:	
Balance on hand	
Jan. 1st, 1899 ...	\$1,188.35

From current and power . . . . .	\$44,049.11	
From sale of lamps and material . . .	3,903.10	47,952.21
	<hr/>	
From banks and individuals . . . . .	7,752.38	
From receiver's certificates, 8,000. .		15,752.38
Disbursements:		
Salaries . . . . .	\$17,890.95	
Supplies, lamps, etc. . . . .	2,892.92	
Carbons . . . . .	973.37	
Taxes, interest, etc.	7,028.15	
Rebate on collections . . . . .	624.00	29,409.39
	<hr/>	
On water contract.	2,000.00	
Water storage . . . .	3,457.76	
Construction . . . . .	3,437.10	8,894.86
	<hr/>	
Banks and individuals . . . . .	26,340.11	26,340.11
Balance . . . . .		248.58
		<hr/>
	64,892.94	64,892.94
	<hr/>	

Intervenors' Exhibit "F" (2). J. W. G.

ANNUAL STATEMENT FOR THE YEAR ENDING  
 ' DECEMBER 31st, 1900.

Receipts:

Balance on hand		
Jan. 1st, 1900 . . .		\$248.58
Current sold for 12		
mos. . . . .	\$50,384.70	
Mdse. sales, lamps,		
etc. . . . .	1,942.45	52,327.15
	<hr/>	
Rebate on purchase		
price reservoir		
site . . . . .	454.40	
Old French mill,		
etc. . . . .	312.25	766.65
	<hr/>	
Receiver's certifi-		
cates. . . . .		9,000.00
Individuals and sun-		
dries. . . . .		1,333.44
		<hr/>

Expenses:

Salaries . . . . .	\$20,683.25
Repairs . . . . .	2,173.51
Carbons . . . . .	360.71
Expense. . . . .	3,289.71
Taxes. . . . .	2,412.23

Arc supplies . . . . .	401.95	
Interest . . . . .	964.50	\$30,285.86
	<hr/>	
Mdse., lamps, etc. . . . .	1,877.18	
Sundry Ind . . . . .	1,270.00	3,147.18
	<hr/>	
Construction . . . . .	2,237.18	
Water Storage . . . . .	17,325.73	
Account water con-		
tract . . . . .	6,000.00	25,562.91
	<hr/>	
Balance . . . . .		4,679.87
		<hr/>
		63,675.82
		<hr/>
		63,675.82
		<hr/>

Intervenors' Exhibit Exhibit "F" (3). J. W. G.

*In the Circuit Court of the United States of America, Ninth  
Judicial Circuit, Southern District of California.*

MERCANTILE TRUST COMPANY,	}	No. 916.
as Trustee,		
	}	
Complainant,		
vs.		
SAN JOAQUIN ELECTRIC COM-	}	
PANY,		
	}	
Defendant,		
And ALFRED YOUNG CHICK et al.,	}	
Intervenors.		

**Certificate of Special Examiner.**

I hereby certify that the foregoing depositions were taken pursuant to the agreement and consent of the so-



licitors for the respective parties, at the times and places stated in the depositions in the presence of Messrs. John D. Works and Geo. E. Church, solicitors for intervenors, and of L. L. Cory, Esq., as the representative of Messrs. Alexander & Green and Charles Monroe, Esq., solicitors for complainant, in the above-entitled cause, and under my direction; and that previous to the giving of his testimony each witness was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said depositions were taken down by me in shorthand and afterwards transcribed into type-writing, the signing by the witnesses of their respective depositions having been waived.

The foregoing is a correct transcript of the testimony taken and of the proceedings had before me as Special Examiner as above set out. Accompanying said depositions are the several exhibits introduced and referred to and specified herein.

All of which is respectfully submitted this 25th day of March, 1901.

JOHN W. GEARHART,  
Special Examiner in Chancery.

[Endorsed]: No. 916. United States Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Company, as Trustee, Complainant, vs. San Joaquin Electric Company, Defendant, and Alfred Young Chick et al., Intervenors. Report of Special Examiner. Filed April 13, 1901. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM-  
PANY,

Complainant,

vs.

THE SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

A. Y. CHICK et al.,

Intervenors.

### Notice and Motion to Apply Moneys.

The intervenors in the above cause move the Court for an order requiring the receiver to apply all moneys received by him from the operation of the plant of the defendant, over and above the necessary operating expenses, to the payment of the accrued and accruing interest on the bonds sued on in this action until such interest is paid and that this suit be continued until the same is paid and satisfied by the surplus earnings of the defendant company.

GEORGE E. CHURCH,

L. A. GROFF,

WORKS & LEE,

Solicitors for the Intervenors.

The complainant and defendant are hereby notified that the above motion will be presented to the Court at its courtroom in the city of Los Angeles, State of California, on the 8th day of April, 1901, at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard.

The motion will be made on the ground that the defendant company has been for some time, and is now, earning a large surplus over and above operating expenses; that it can, if properly managed by the receiver, pay all interest due on its bonds within a reasonable time and avoid the sacrifice of its property and loss to the bondholders that must result from a foreclosure and sale of the property.

The motion will be made on the pleadings, minutes, and files in the case and the evidence taken by the intervenors in support of their bill in intervention.

GEORGE E. CHURCH,  
L. A. GROFF,  
WORKS & LEE,  
Solicitors for Intervenors.

[Endorsed]: No. 916. United States Circuit Court, Ninth Circuit, Southern District of California. The Mercantile Trust Co., Complainant, vs. The San Joaquin Electric Co. Defendant. A. Y. Chick et al., Intervenors. Motion and notice of hearing. Received copy of the within notice this 1st day of April, 1901. Bicknell, Gibson & Trask, Solicitors for Defendant. Chas. Monroe, per P. R. Wilson. Filed April 1, 1901. Wm. M. Van Dyke, Clerk. George E. Church, L. A. Groff, Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,	} Complainant,
vs.	
THE SAN JOAQUIN ELECTRIC COMPANY,	} Defendant.

**Stipulation as to Taking Depositions of John Ballantine Niven  
and Henry C. Deming.**

United States of America, }  
Southern District of New York. } ss.

Deposition of witnesses, John Ballantine Niven and Henry C. Deming, on behalf of the complainant, taken on the 25th day of March, 1901, at 120 Broadway, New York City (Borough of Manhattan), in accordance with the annexed notice for the taking of said depositions:

**Appearances:**

WILLIAM W. GREEN, Esq., of Counsel for Complainant;

CHARLES C. BUELL, Esq., of Counsel for Intervening Petitioners, Alfred Young Chick and William Flanders Lewin.

It is stipulated and agreed by counsel that these depositions may be taken on this 25th day of March, 1901,

with the same force and effect as if the same were taken on the 14th day of March, 1901, the time fixed in the notice for the taking of the same; the said adjournment from the 14th day of March to the 25th day of March, 1901, having been taken at the request of the counsel for the intervening petitioners.

It is further stipulated that the testimony of the witnesses may be taken by a stenographer and reduced to typewriting, and that the signatures of the witnesses to their depositions be waived.

It is also stipulated by counsel that all objections to the materiality, competency or relevancy of the testimony of the witnesses be taken at this time to be passed upon at the trial of the cause.

### Deposition of John Ballantine Niven.

John Ballantine Niven, a witness called on behalf of the said complainant, and residing at New York City, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

#### Direct Examination.

(By Mr. GREEN.)

Q. Mr. Nevin, what is your profession?

A. I am a chartered accountant.

Q. With an office in this city?

A. With an office at 30 Broad street, New York.

Q. Have you had an occasion to make any examination of the books or accounts of the corporation known as the San Joaquin Electric Company? A. I have.

(Deposition of John Ballantine Niven.)

Q. When and where did you make such examination?

A. In April, 1900.

Q. Where? A. At Fresno, California.

Q. At the office of the company?

A. At the office of the company.

Q. As a result of such examination did you prepare a tabulation showing the financial condition of the company, in the nature of a balance sheet, as of December 31, 1898?

Mr. BUELL.—Objected to as incompetent.

A. I did.

Q. Have you such tabulated statement or balance sheet with you? A. I now produce it.

Mr. GREEN.—I ask that it be marked in evidence, dated as of this date.

Mr. BUELL.—I object to the introduction of the balance sheet on the ground that it is incompetent, immaterial, and irrelevant.

Balance sheet marked Complainant's Exhibit "A," of March 25th, 1901, etc.

Said balance sheet is in the words and figures following, to wit:

Complainant's Exhibit "A" of March 25, 1901.

SAN JOAQUIN ELECTRIC COMPANY.

Balance Sheet, 31st December, 1898.

Liabilities:		Franchises:	
Capital stock authorized and issued:		As at 1st January, 1898.....	\$800,000.00
8,000 shares of \$100 each.....	\$800,000.00	Water rights, reservoirs, build- ings and plant, including ma- chinery, pipe and pole lines, etc.	
Less: In Treasury.....	10,000.00	As at 1st January, 1898.....	\$339,562.03
	\$790,000.00	Additions in 1898.....	15,945.80
First mortgage 6% Gold Bonds, repayable 1935:			<hr/>
Authorized: 1600 Bonds of		Deduct: Depreciation on	\$355,507.83
\$500 each.....	800,000.00	buildings and plant, say..	11,000.00
			<hr/>
Whereof certified and issued		Fresno Water Company,	
by the Trustees.....	555,000.00	shares account:	
Less: In Treasury.....	31,000.00	As at 1st January, 1898.....	\$165,000.00
	524,000.00	Additions since.....	500.00
			<hr/>
Fresno Water Company.....	22,688.22	Horses, wagons and tools, etc..	2,067.45
Bills Payable.....	17,089.20	Unexpired taxes.....	885.12
Sundry Creditors:		Accounts receivable.....	6,356.55
Accounts Payable.....	12,062.40	Cash in bank.....	1,188.35
Interests accrued and unpaid:		Excess of liabilities over assets:	
On Bonds.....	\$15,750.00	As at 1st January, 1898,	
On Bills Payable...	556.00	as adjusted.....	\$34,255.54
		Add: Deficiency year 1898,	
		per annexed account.....	27,384.98
			<hr/>
	\$1,382,145.82		\$1,382,145.82

[Endorsed]: Complainant's Exhibit "A" of March 25,  
1901. P. Damm, Notary Public, Kings County, N. Y.  
Certificate filed in New York County.



(Deposition of John Ballantine Niven.)

Q. Have you also prepared a tabulated statement showing the profit and loss of this corporation for the year ending December 31, 1898?      A. I have.

Q. Will you produce it?

A. I will. (Producing same.)

Mr. GREEN.—I ask that it be marked in evidence.

Mr. BUELL.—Same objection.

(Statement marked Complainant's Exhibit "B," of March 25th, 1901, etc.)

The said statement is in words and figures following, to wit:

Complainant's Exhibit "B" of March 25, 1901.  
 SAN JOAQUIN ELECTRIC COMPANY.

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDING 31st DECEMBER, 1898.

Salaries and wages.....	\$14,797.60	Sales of light and power:	
Supplies and general expenses, including		Ordinary consumers.....	\$31,432.28
repairs.....	3,063.79	Hanford extension.....	1,500.00
Carbons for arc lights.....	1,118.19	Fresno water company.....	6,000.00
Office expenses.....	190.63		
Legal expenses.....	624.15		
Taxes and licenses.....	1,902.30	Merchandise, excess of sales over purchases..	\$38,932.28
Bad debts.....	535.47	Fresno Water Company—Dividends.	673.62
Depreciation on buildings and plant.....	11,000.00	(NOTE.—No dividends earned or declared.)	
		Balance, being loss transferred to Balance	
		Sheet.....	27,384.98
Interest:			
On bonds.....	31,500.00		
On bills payable and loans.....	2,258.75		

[Endorsed]: Complainant's Exhibit "B" of March 25, 1901. P. Damm, Notary Public, Kings Co., N. Y. Certificate filed in New York County.

\$66,990.88

(Deposition of John Ballantine Niven.)

Q. There appears in Exhibit "A" a statement of excess of liabilities over assets amounting to \$61,640.52. I will ask you to state whether or not that is a correct statement of the apparent condition of the company as it appears from the books of the company kept at its principal office in Fresno?

A. It is, subject to certain adjustments for the year 1898, which I made upon the figures as shown by the books.

Q. What were the nature of these adjustments, generally; I do not care for a detailed statement of it. Was it the transference of charges from one period to another?

A. The chief difference arises through the introduction of charges which were not on the books at all; I think that is a sufficient answer.

Q. Charges of what nature?

A. The chief charges referred to are for interest upon bonds and for depreciation; there are also a number of smaller charges for the transference of items which had been charged to construction upon the books and which were really profit and loss items; it doesn't seem worth while to state them more particularly just at present.

Q. By depreciation you refer to the item of \$11,000, as shown in Exhibit "B"?      A. I do.

Q. And that was for depreciation on the buildings and plant of the company?

A. Yes; it doesn't include any allowance for depreciation arising through the expiring of the franchise of the company.

Q. But is simply physical depreciation?

A. Yes; physical depreciation; that is a better answer.

(Deposition of John Ballantine Niven.)

Q. Then, with the exception of such transferences as were made on account of charges improperly made in your judgment to income account which should be properly made to capital account—

The WITNESS.—The other way, you have it turned around:

Mr. GREEN.—The other way?

The WITNESS.—Yes, the chief transferences I made were from the capital account to the income account, as they had been erroneously charged to capital account.

Q. With these exceptions then, that represents the financial status of the company as of the date of December 31, 1898?

Mr. BUELL.—I object to that both as to the form of the question and as calling for a conclusion of the witness, and on the ground that it is incompetent and irrelevant.

A. Yes, as indicated by the books, subject to the adjustments that I have referred to, applicable to the year 1898 particularly.

Q. In Exhibit "B" there is a credit under sales of \$1,500 on account of "Hanford Extension"; was that money ever actually received by the Electric Company so far as appears from the books of the company?

Mr. BUELL.—If the witness knows.

Mr. GREEN.—If he knows; I asked him if it appears by the books.

A. No part of that money has been received, and the status of this transaction is that certain sums were advanced by parties in Hanford for the construction of a line to Hanford and in repayment of these sums the

(Deposition of John Ballantine Niven.)

gross earnings from the Hanford Extension were agreed to be left in the hands of those parties in Hanford until the debt is liquidated.

Mr. BUELL.—I object to the question because it is not shown that the witness has any knowledge of the matter, and I move to strike his answer out.

Q. Where did you get the information upon which you base this answer?

A. The information which I have just given, I gained from the exhibition either of the actual contract or of a copy of the contract between H. G. Lacy & Company in Hanford and the company.

Mr. BUELL.—I object, and also on the ground that it is shown that the witness' knowledge of this matter is mere hearsay.

Cross-Examination.

(By Mr. BUELL.)

Q. Mr. Niven, do you know whether or not you saw all the books of the San Joaquin Electric Company?

A. I have no reason to believe that any of the books were kept back.

Q. Answer the question—I asked you a question, give me an answer. A. My answer is I did.

Q. How do you know you did; how do you know that you saw them all?

A. From my knowledge of the books which a company of that nature would be expected to keep; there were exhibited to me all the books which one would expect to have exhibited; any book or document which I asked for was exhibited unquestioned.

Q. Then you simply judge that you saw all the books, because there were no books that you asked for that were not produced, is that right?

(Deposition of John Ballantine Niven.)

A. I should qualify my answer in this way: My first proceeding when I arrived at the office was—

Q. No, I didn't ask you that; you can explain that afterwards; please answer the question.

(Question repeated.)

A. I don't base my reply entirely upon the books.

Q. You are avoiding the question now?

A. No, sir; I want to tell you how I act—

(Question repeated.)

A. Not entirely.

Q. Under what other circumstances do you make this statement that you saw all the books of the company?

A. When I first arrived at the office of the company, I asked for a full list of the books of the company which were kept. This was furnished to me, and as far as I can remember anything that may have occurred to me as of omission was asked for and immediately produced.

Q. How do you know that all the books of the company were furnished you when you asked for a full list?

A. Well, as I have just said, I supplemented their reply with leading questions of my own which brought forth what I desired.

Q. Then, when you asked for all the books, you did not obtain them, did you, until you asked for further information of their books?

A. I would not like to say that I did not obtain them upon the first inquiry.

Q. Did you or did you not?

A. Excuse me, you are now asking me to make a

(Deposition of John Ballantine Niven.)

statement of circumstances which occurred some time ago.

Q. Statement of fact whether or not you made the request that you have testified to for all the books of the company—I ask you whether or not you got them?

A. May I speak off the record, Mr. Buell; is there any objection to my speaking off the record?

Q. I think you can answer that question, Mr. Niven?

A. You are trying to drive me into a corner—I want to explain that.

Q. I am simply asking you questions which, if incompetent, Mr. Green would object to.

A. My recollection is that I received everything that I asked for upon inquiry.

Q. When you requested all the books of the company, was that before you started the examination of the books?

A. Undoubtedly.

Q. Now, before commencing the examination of the books, did you receive all the books of the company?

A. They were put at my disposal.

Q. They were put at your disposal? A. Yes.

Q. What do you mean when you say what information was missing you obtained by leading questions?

A. When I said that I intended to convey to you that it is my custom when I go to make an examination—

Q. I don't care what your custom is—what did you do in this instance?

Mr. GREEN.—Let him finish his answer.

Q. What did you do in this instance?

(Deposition of John Ballantine Niven.)

A. It is my custom to ask for a list of the books, which I take down. It very naturally occurs to me to get possession of the cash book, and I make this suggestion to them—"Have you got a cash book?" Their answer, of course, will be "Yes." I have now in my hands a list of the different books which I saw, and really cannot say whether the list was given to me without any prompting on my part or not. It all took place at one moment, and I answer generally that they gave me the books fully upon my making inquiry.

Mr. BUELL.—I move to strike out the answer of the witness, as not being responsive to the question, and as being incompetent, immaterial, and irrelevant.

Q. Then, as matter of fact, you cannot state positively, can you, that you did see all of the books, or all of the memoranda connected with this company, which would indicate its financial condition on the date which you have mentioned, namely, December 31, 1898?

A. I believe that I did see everything material.

Q. That is, you believe, do you know whether or not you did?

A. I will answer that in the affirmative; I do know that I received everything.

Q. How do you know?

A. I have already indicated what means I took to get the company's records brought before my notice.

Q. When you say that you know that you received all the books and memoranda affecting the transactions of the company which showed its financial condition, you



(Deposition of John Ballantine Niven.)

mean that you have no reason to believe that you did, isn't that right?

A. Yes; practically it is; I don't see much difference myself, but—

Q. But there could be a possibility of your not having seen all, couldn't there?

Mr. GREEN.—Objected to as immaterial and irrelevant.

A. I think so.

Q. That is what you think?                   A. Yes.

Q. You have stated that you made certain allowances for physical depreciation of the plant of this company (I believe it amounts to \$11,000), is that right?

A. Yes.

Q. How did you arrive at that?

A. I arrived at that figure after careful consideration with the officers of the company, and particularly with Mr. Smith, the chief engineer of the company.

Q. Then, in arriving at that amount, you made this amount arbitrarily, from information—hearsay information, in regard to the physical condition of the plant, Mr. Niven?

Mr. GREEN.—Objected to on the ground that it calls for a conclusion.

A. Not entirely; I have some experience in making up accounts myself, and any information that I got from these people I used along with my own information and knowledge of the practice in such matters.

(Deposition of John Ballantine Niven.)

Q. That is, you made this amount conform to what you had observed, or had arrived at a conclusion in regard to, from other companies—other plants?

Mr. GREEN.—I object to the form of the question, as it is a statement of counsel which the witness is asked to confirm or deny, and is not interrogative.

A. I made it from the general experience which I have gained in the practice of my profession for some years.

Q. Did you make any physical examination of this plant?

A. I did not pretend to make any physical examination of the plant.

Q. Did you make any examination of the books of the company, such as you had at your command, for the year 1899?

Mr. GREEN.—Objected to on the ground that it is immaterial, incompetent and irrelevant.

A. I did.

Q. Did you prepare a balance sheet of the company showing its condition on December 31, 1899?

Mr. GREEN.—Same objection; also on the ground that all matters relating to the business or affairs of the company in the year 1899, were subsequent to date of the first default upon which the foreclosure action was based.

A. I did.

Q. Have you that balance sheet?

(Deposition of John Ballantine Niven.)

Mr. GREEN.—Same objection.

A. I certainly have it.

Q. Have you it with you?

Mr. GREEN.—Same objection.

A. I think you have a copy; I think I have a copy lying around somewhere; yes, I have it before me.

Redirect Examination.

(By Mr. GREEN.)

Q. Do you know anything more with reference to the questions propounded on cross-examination by counsel which you wish to explain in your answers?

A. I do not know that there is any necessity to explain anything.

Recross-Examination.

(By Mr. BUELL.)

Q. You made a report, did you not, Mr. Niven, to Mr. Street, representing the American Securities Agency?

Mr. GREEN.—Objected to as incompetent, immaterial and irrelevant.

A. I did.

Q. You were employed by him, were you not?

Mr. GREEN.—Same objection.

A. I was.

Q. Did you state in that report, Mr. Niven, that the question of the amount of depreciation to be charged was a somewhat difficult one and it might be desirable to obtain technical advice as to the adequacy of the sums which you had included in the account?

(Deposition of John Ballantine Niven.)

Mr. GREEN.—Same objection.

A. Yes, I did; that is a fact.

WITNESS.—In stating that I made the report, I should amend my answer by saying that Messrs. John A. Touch & Co., of London, made a report and that I made the examination for them, will that do?

Q. Did you prepare the report that is signed by Touch & Co.?

Mr. GREEN.—Same objection.

A. That is signed by John A. Touch & Co. Yes, I did.

Q. Mr. Niven, you state in this report that “that these accounts are not in exact accordance with the books of the companies as we found them”?

Mr. GREEN.—Same objection, and I object to any questions with reference to this report unless you are going to put it in evidence.

A. I did.

Q. What was the condition of affairs?

Mr. GREEN.—Same objection.

A. I refer you to what I stated in an earlier answer.

Q. Well, you did make that report, did you not?

Mr. GREEN.—Same objection.

A. Oh, yes.

Signature of the witness to the foregoing deposition is waived.

R. DAMM,

Notary Public, Kings County, N. Y. Certificate filed in  
New York County.

### Deposition of Henry C. Deming.

Henry C. Deming, a witness called on behalf of the said complainant, and residing at New York City, more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

#### Direct Examination.

(By Mr. GREEN.)

Q. Mr. Deming, you are an officer of the Mercantile Trust Company, the complainant in this suit, are you not?

A. I am the vice-president.

Q. And have been such for how long?

A. Some four or five years.

Q. In the ordinary business of the Mercantile Trust Company, who has the principal charge of matters concerning what are known as railroad and corporate trusts?

A. I have with the secretary of the company.

Q. In the course of your duties are you ordinarily informed as to such trusts? A. I am.

Q. And of any proceedings taken to enforce them?

A. Yes, sir; I am.

Q. Do you know any of the bondholders of the San Joaquin Electric Company?

A. We were requested to take certain action under the mortgage by someone representing a large majority of the bonds?

Q. Was the name of the person whom you saw with reference to the matter, Mr. Charles F. Street?

(Deposition of Henry C. Deming.)

A. I think it was.

Q. You saw him together with myself?           A. Yes.

Q. Do you recollect whether or not that request to foreclose was made by the American Securities Agency, Limited?

A. I think that is the name of the corporation which requested us to act.

Q. Except so far as you have been informed by the papers in this matter, have you ever been aware of any proceedings for the reorganization of this corporation, the San Joaquin Electric Company?

A. I have not.

Q. Have you ever had any conversation with any of the bondholders with regard to any reorganization of the company?

A. I do not recall any such conversation.

Q. Would you be likely to recall any such conversation in case The Mercantile Trust Company was asked to do or not to do certain things in connection with such proposed reorganization?           A. I would.

Q. You do not recall any such?           A. No, sir.

Q. Have you yourself, or has any other officer of The Mercantile Trust Company, or the corporation itself, so far as you know, entered into any arrangement or agreement for any reorganization of this corporation, or to represent any one class of bondholders as against any other class of bonds?

A. Not that I am aware of, and I should be likely to know if any other officer had done so; I have not done so myself.

(Deposition of Henry C. Deming.)

Cross-Examination.

(By Mr. BUELL.)

Q. The only person that you have seen representing the bondholders has been Mr. Street representing the American Securities Agency?

A. As I recall it, Mr. Street representing the American Securities Agency is the only person I have seen in connection with this business.

Q. Did he tell you anything about any scheme for the reorganization of this company?

A. I do not recall that he did.

Q. Would you be likely to remember if you had, do you think?

A. I cannot answer positively whether I had any conversation with Mr. Street with reference to any reorganization, but I do not think I did.

Q. Then you knew nothing at the time this action was commenced to foreclose the trust deed against the San Joaquin Electric Company of any scheme of reorganization proposed by Mr. Street or by the American Securities Agency?

A. No, I knew nothing of such reorganization; there was no arrangement made with the Trust Company for the deposit of the securities under the plan, and I had no knowledge, I can testify positively, as to any reorganization.

Q. Have the bonds been deposited with you?

A. I think not; no.

Q. Simply upon the request of Mr. Street you have instituted this proceeding?

(Deposition of Henry C. Deming.)

A. Upon the written request of the American Securities Agency, Limited, representing a majority of the bonds we instituted these proceedings.

Q. Did you ask for any further information in regard to the matter before commencing this suit?

A. I do not recall; we knew of the default in the payment of interest and were requested to enforce the penalty of the default by foreclosure.

Signature of the witness to the foregoing deposition is waived.

R. DAMM,

Notary Public, Kings County, N. Y. Certificate filed in New York County.

*In the Circuit Court of the United States, Ninth Circuit, Southern District of California.*

THE MERCANTILE TRUST COMPANY, as Trustee,

Complainant,

vs.

THE SAN JOAQUIN ELECTRIC COMPANY,

Defendant.

**Notarial Certificate.**

United States of America,  
Southern District of New York,  
State and County of New York. } ss.

I hereby certify that on the 25th day of March, 1901, before me, Rudolph Damm, a notary public of the State



of New York, for Kings County, with certificate filed and authorized by law to act and acting in New York County, at my office No. 120 Broadway, in the city of New York (Borough of Manhattan), county and State of New York, personally appeared, pursuant to the notice hereto annexed, at 11 o'clock A. M., John Ballantine Niven and Henry C. Deming, witnesses named in said notice, and William W. Green, Esq., of counsel for the complainant, and Charles C. Buell, Esq., of counsel for the intervening petitioners, Alfred Young Chick and William Flanders Lewin, also appearing, and the said John Ballantine Niven and Henry C. Deming being by me first severally duly sworn to testify the whole truth, and being duly cautioned, and being carefully examined, deposed and said as appears by their depositions hereto attached.

And I further certify that the said depositions were taken down by me in shorthand and afterward reduced by me to typewriting, the signatures of the witnesses having been waived by counsel, and that the same have been retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law.

And I further certify that the reason why said depositions were taken was that the said John Ballantine Niven and Henry C. Deming are both residents of the city of New York in the State of New York, which is more than one hundred miles from the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further certify that the fee for taking said depositions, twenty dollars, has been paid to me on behalf of the complainant, and the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal of the city of New York (Borough of Manhattan), county and State of New York, this 26th day of March, A. D. 1901.

[Seal]

R. DAMM,

Notary Public, Kings County, N. Y. Certificate filed in  
New York County.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM-  
PANY, as Trustee,

Complainant,

vs.

THE SAN JOAQUIN ELECTRIC  
COMPANY,

Defendant.

### Notice to Take Depositions.

The intervenors, Alfred Young Chick and William Flanders Lewin, will take notice that the complainant, The Mercantile Trust Company, as trustee, will examine the following witnesses, to wit: Charles F. Street, Henry C. Deming and John Ballantine Niven, in the above-entitled cause under the Sixty-seventh Rule in Equity, as amended, before Rudolph Damm, at his office in the

Equitable Building, in the city of New York, county of New York, State of New York, on Wednesday, March 14th, 1901; beginning said examination at ten o'clock A. M. of said day and continuing from day to day until completed.

ALEXANDER & GREEN,  
CHARLES MONROE,  
Solicitors for Complainant.

Service accepted this 1st day of March, 1901.

WORKS & LEE,  
Solicitors for Intervenors.

[Endorsed]: No. 916. Circuit Court of the United States, Ninth Circuit. Southern District of California. The Mercantile Trust Company, Complainant, vs. The San Joaquin Electric Co., Defendant. Notice of Taking Depositions. Chas. Monroe, Attorney at Law, Tel., Main 708, 402 Wilcox Bldg., Los Angeles; Cal.; Attorney for Complainant.

[Endorsed]: 916. U. S. Circuit Court, Southern District of California. The Mercantile Trust Company, as Trustee, against The San Joaquin Electric Company. Depositions of John Ballantine Niven and Henry C. Deming. Opened and filed June 20, 1901. Wm. M. Van Dyke, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

THE MERCANTILE TRUST COM- PANY, as Trustee,  vs.  SAN JOAQUIN ELECTRIC COM- PANY,   Defendant.	}	Complainant,  No. 916.  Defendant.
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**Conclusions of the Court upon Bill in Intervention.**

In this case, the evidence does not connect complainant with the proposed scheme of reorganization set forth in the bill in intervention. The only testimony pointing to such connection is that of Mr. Coffin, and his testimony on this point is purely hearsay; while the vice-president of the Trust Company, Mr. Deming, who, together with the secretary of said company, had charge of matters concerning railroad and corporate trusts, such as the pending foreclosure suit, denies any knowledge of said scheme of reorganization, except such as has been imparted by the records herein. No other finding is possible than one in accordance with the testimony of Mr. Deming, and this, by the authorities cited below, is fatal to the intervention. (*F. L. & T. Co. v. K. C. W. & N. W. Ry. Co.*, 53 Fed. 182; *Clyde v. R. & D. R. R. Co.*, 55 Fed. 445; *Toler et al. v. E. T. V. & G. Ry. Co. et al.*, 67 Fed. 168; 1 *Foster's Fed. Prac.* 333.)

The evidence, however, also satisfies me that there was no fraud or collusion between Seymour and Eastwood and the bondholders at whose request the pending suit was brought, in regard to said proposed reorganization. The positive testimony of both the parties named is against any agreement or understanding of the kind indicated, and there is nothing in the record to overcome their testimony.

Furthermore, the situation of the defendant company, and the causes of its financial embarrassment, are set forth by Mr. Seymour in his testimony, at pages 47, et seq., as follows:

“Q. To what do you attribute your inability to meet your obligation for the interest at that time.

A. A short answer would be, lack of funds, of course.

Q. Yes, but there were some reasons for a lack of funds. I would like you to explain what you understand to be the difficulty.

A. As I stated before, we were in business relationship with the Municipal Investment Company, of Chicago, who contracted with us to take bonds of us at eighty cents on the dollar. Well, they fell down on their contract with us before the plant was completed, and from that time on we were simply with an unfinished plant on hand, with large debts coming in from all sides. We were simply at our wits ends what to do, so we did the best we could all the time and were overwhelmed with debts all the time. \* \* \*

Mr. COREY.—Q. Did the shortage of water have anything to do with this?

Mr. WORKS.—That is what I am about to get at.

A. When they fell down we were at sea, I was going to say. Our plant was incomplete. We couldn't furnish current to the consumers unless we made additional improvements, additional betterments, so that we were crowded on that account. Then the dry year came along and we had to shut down several months, and that also crippled us.

Q. If the dry year that you speak of had been an ordinary year and in the condition in which you found yourselves you would have been able to have met this interest, would you not?

A. Well, I am not prepared to state that.

Q. Well, what is your judgment about it?

A. We would have had a much better chance. We would have probably gotten credit so as to have borrowed money to proceed, but we probably couldn't have gotten it out of the direct revenues.

Q. Would it have lacked very much of meeting the obligations of the company if you had had an ordinary year, such as, for example we have this year?

A. We possibly would have pulled through.

Q. Did you explain that situation to Mr. Street?

A. Yes, we explained fully the entire position of affairs here, but we told him as far as we could see, in view of the condition of affairs, that we saw no means of avoiding a six month's default. In addition to our other troubles, we had a lot of floating indebtedness that I had personally made myself liable for, loans made on my personal assurance that they would be repaid.

Q. Have those been taken up since?      A. Yes, sir.

Q. All of those?           A. Yes, sir.

Q. When was the last of those paid?

A. They were generally paid before the six months default was made.

Q. You cleaned up all of those before the default in your interest?

A. The six months, yes, sir. There was some—I don't remember—some \$10,000, probably, of that nature. The money was borrowed to pay the preceding six months' interest."

If there are any facts made prominent above others by this testimony, they are that the default in the interest due January, 1899, and the continuance of such default for six months, were owing to the inability of the company to pay, and were not the result of any conspiracy between the officers of said company and bondholders. Besides, it should be remembered, in this connection, that Seymour and Eastwood owned more than one-half of the capital stock in the Electric Company, the whole of said stock outstanding being \$798,000, and, that, under the proposed plan of reorganization, \$750,000 of capital stock was to be issued, and of this amount only \$100,000 was to be turned over to Seymour and Eastwood. It is incredible, that these parties would wreck a solvent company, in which they owned more than one-half of the capital stock, in order to promote a re-organization, under which they would own less than one-seventh of the capital stock. It is true, as appears by a comparison of the proposed scheme of re-organization with the tabulated statement, or balance sheet, prepared by and made a part of the deposition of the witness Nivin, that,

under said scheme of re-organization, the par value of the capital stock was to be \$40,000 less than the par value of the capital stock now outstanding, and the bonded indebtedness reduced from \$524,000 to \$432,000, yet the appreciation thus proposed of the capital stock would certainly be no adequate compensation to Seymour and Eastwood for permanently surrendering control of a solvent company to a new organization, and reducing the stock to be held by them, under said organization, to one-fourth of their present holdings. But, whatever may be said of their interests, the evidence, as I have already stated, fails to show, that Seymour and Eastwood, or either of them, participated in or consented to the proposed scheme of re-organization.

The order allowing the bill in intervention to be filed will be vacated, and said bill dismissed.

OLIN WELLBORN,  
Judge.

[Endorsed]: No. 916. U. S. Circuit Court, Southern District of California. Mercantile Trust Co. vs. San Joaquin Electric Co. Conclusions of the Court upon Bill in Intervention. Filed September 3, 1901. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.



At a stated term, to wit, the July Term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Tuesday, the third day of September, in the year of our Lord, one thousand nine hundred and one. Present: The Honorable OLIN WELLBORN, District Judge.

THE MERCANTILE TRUST COMPANY,

Complainant,

vs.

THE SAN JOAQUIN ELECTRIC COMPANY,

Defendant,

A. Y. CHICK et al.,

Intervenors.

No. 916.

**Order Vacating Order Allowing Bill in Intervention to be Filed and Dismissing Bill.**

This cause having heretofore been submitted to the Court for its consideration and decision upon the motion of the intervenors for an order requiring the receiver to apply all moneys received by him from the operation of the plant of the defendant over and above the necessary operating expenses, to the payment of the accrued and accruing interest on the bonds sued on in this action, until such interest is paid, and that this suit be continued until the same is paid, and satisfied by the

surplus earnings of the defendant company, and also upon the bill in intervention and the answers thereto, and upon the motion of the complainant that the Court vacate the order heretofore made herein, granting leave to A. Y. Chick & Company to intervene and become parties herein and to dismiss the petition and bill in intervention, and the Court having duly considered the same and being fully advised in the premises, now, on this 3d day of September, 1901, being a day in the July Term, A. D. 1901, of said Circuit Court of the United States, for the Southern District of California, the court files its written conclusions upon the bill in intervention and orders that the order allowing the bill in intervention to be filed be vacated, and said bill dismissed.

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*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California, Southern Division.*

MERCANTILE TRUST COMPANY, )  
Complainant, )

vs.

SAN JOAQUIN ELECTRIC COM- )  
PANY, )

Defendant, )

ALFRED YOUNG CHICK and WILL- )  
IAM FLANDERS LEWIN, Copart- )  
ners Under the Firm Name and Style )  
of A. Y. CHICK & COMPANY, )

Intervenors. )

**Petition for Appeal and Order Allowing Same.**

The above-named intervenors, A. Y. Chick and William Flanders Lewin, copartners doing business under the

firm name and style of A. Y. Chick & Company considering themselves aggrieved by the order and decree entered by said Court on the 3d day of September, 1901, in the above-entitled proceedings, dismissing their bill in intervention therein, do hereby appeal from said order to the United States Circuit Court of Appeals, and they pray that this, their appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

LEWIS A. GROFF,  
WORKS & LEE,  
Solicitors for Intervenors.

And now, to wit, on the 28th day of October, 1901, it is ordered, in open court, that the appeal be allowed as prayed for.

OLIN WELLBORN,  
Judge of the United States Circuit Court.

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Company vs. San Joaquin Electric Company. Appeal. Filed October 28, 1901. Wm. M. Van Dyke, Clerk. Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California.*

MERCANTILE TRUST COMPANY,  
Complainant,

vs.

SAN JOAQUIN ELECTRIC COM-  
PANY,

Defendant,

A. Y. CHICK and WILLIAM FLAND-  
ERS LEWIN,

Intervenors.

### Assignment of Errors.

Now, come the above-named appellants, A. Y. Chick and William Flanders Lewin, by L. A. Groff, John D. Works, Bradner W. Lee and Lewis R. Works, their attorneys, and say that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

1. That the Circuit Court of the United States, Ninth Circuit, Southern District of California, erred in striking out from the bill in intervention of the appellants, on motion of the complainant, the following:

“Your intervenors further show to your Honors as follows: They admit that on or about the 1st day of July, 1895, the defendant made, executed and issued its certain sixteen hundred (1600) bonds, each for the principal sum of five hundred dollars (\$500.00), and for the

principal sum in the aggregate thereof of eight hundred thousand dollars (\$800,000.00), each bearing date the 1st day of July, 1895, wherein and in each of said bonds the said defendant, for value received, promised to pay to the bearer the sum of five hundred dollars (\$500.00) in gold coin of the United States of America, of the then standard of weight and fineness, on the 1st day of July, 1915, at the office of the complainant, in the city of New York, together with interest thereon at the rate of six (6) per cent per annum, payable semi-annually in like gold coin, on the 1st days of January and July in each year, on presentation and surrender of the interest coupons attached to said bonds, as they severally should become due, said interest also being payable at the office of said complainant.

“They admit that in order to secure the payment of the principal and interest of said bonds, the said defendant on or about the 1st day of July, 1895, made, executed and delivered to the complainant as trustee a certain mortgage or deed of trust, dated on that day, wherein and whereby it granted, bargained, sold, assigned, set over, released, aliened, conveyed and confirmed unto said complainant and its assigns and successors, in trust, for the purposes in said mortgage set forth, the property described in the third paragraph of the bill of complaint herein, to have and to hold all such property and all other possession, franchises and claims acquired or to be acquired, and all other premises in said mortgage expressed to be conveyed and assigned unto the use of said complainant and its successors in interest, according

to the manner, terms and effect in said mortgage expressed, of and concerning the same for the benefit, protection and security of the persons holding the said bonds, or any of them; that said mortgage or deed of trust was duly recorded in the proper offices in the counties in which the property described therein and thereby conveyed, or intended so to be, was situated, a copy of which mortgage is annexed to and made a part of the bill of complaint herein.

“They admit that of the bonds provided to be issued under and secured by said mortgage or deed of trust, or intended so to be, eleven hundred ten (1110) bonds, numbered from one (1) to eleven hundred ten (1110) inclusive, for the principal sum in the aggregate of five hundred fifty thousand dollars (\$550,000.00); were duly executed and issued by the said defendant, and were certified by said complainant as trustee under said mortgage or deed of trust, and that the same are now outstanding in the hands of bona fide holders thereof for value.

“They admit that in and by the said mortgage or deed of trust it was, among other things, provided that in case the said defendant or its successors should make default in the payment of any interest on any of said bonds, according to the tenor thereof, the payment thereof having been demanded according to the terms thereof, or should make a breach of any of the covenants or agreements in said mortgage contained by it to be done or performed, and such default or breach should continue for the period of six (6) months, that then and thereupon

the principal of all of said bonds then outstanding and unpaid might, at the election of the trustee, or at the request of one-tenth (1-10) of the amount of bonds then outstanding and secured thereby, become immediately due and payable.

They admit that in and by said mortgage or deed of trust, it was further provided that if the defendant or its successors should make default in the payment of the principal or any part thereof, or any installment of interest, or any part thereof, and such default should continue for the space of six (6) months after maturity and demand therefor, it should be the duty of the trustee, upon request and indemnification in said mortgage provided, to proceed in any proper court to foreclose said mortgage, and that the said trustee, the complainant herein, should be entitled to the appointment of a receiver and specific performance of all the covenants therein contained, and said trustee might, in case of default, apply to any court having competent jurisdiction, for instructions as to the matters not therein expressly provided for.

“They admit that on or about the 1st day of January, 1899, there fell due a semi-annual installment of interest upon said bonds represented by the coupons attached thereto, amounting to the sum of sixteen thousand six hundred fifty dollars (\$16,650.00), which amount of interest the defendant refused and neglected to pay; but deny that payment thereof was duly or at all demanded, and that a like default occurred on the 1st day of July, 1899; but your intervenors allege that said default was the

result of collusion between the said defendant and its officers in charge of its business and the holders and owners of certain of the bonds of said defendant, and the same owners and holders of bonds who have caused this suit to be instituted, and for the purpose of bringing about an unnecessary re-organization of said company and its affairs to the detriment of your intervenors and other of the bondholders of said defendant not parties to said collusion or scheme of re-organization; and they further aver that the said defendant was fully able to pay the said installments of interest as they fell due, out of the earnings and funds of said company, and that no proper demand for the payment of said interest was ever made.

“They admit that the said default continued for a period of more than six (6) months, but deny that the complainant was requested by the holders of more than a majority of the bonds outstanding and secured by said mortgage or deed of trust, or intended so to be, under the power and authority given to it by said mortgage or deed of trust, to declare, or that the complainant elected or declared that the principal of all the bonds then outstanding and unpaid should become immediately due and payable, or that it served notice of such election upon the defendant.

“They deny that the defendant, San Joaquin Electric Company, is insolvent, or wholly or at all unable to pay its present or presently accruing indebtedness or liabilities or the interest on said bonds now due, or that the property covered by the said mortgage or deed of trust, or intended so to be, is slender or insufficient security for the payment of said indebtedness.



“They deny that in addition to the amount represented by the said bonds and coupons, the said defendant is indebted to sundry or divers persons in large sums, which debts, or any of them, have been incurred in the operation of the business of the said defendant, or which debts the said defendant is wholly or at all unable to pay.

“They deny that by reason of the insolvency of the said defendant, or for any other reason, it is necessary for the proper protection of the holders of the bonds and coupons secured by the mortgage or deed of trust given to the complainant, as aforesaid, that a receiver or receivers of the property of the said defendant, San Joaquin Electric Company, should be appointed, with the powers given to such receiver or receivers in like cases under the course and practice of this court, or at all.

“They admit that the matter in controversy herein exceeds five thousand dollars (\$5,000.00), exclusive of interest and costs.”

2. Said Court erred in dismissing the bill in intervention of the appellants in said action.

3. Said Court erred in holding that the evidence in the matter of the intervention of the appellants did not connect the complainant with the proposed scheme of re-organization, as alleged in the bill of intervention.

4. Said Court erred in holding that the testimony of the witness Coffin as to the said scheme of re-organization, and the knowledge thereof on the part of the complainant, was hearsay.

5. Said Court erred in holding that there was no fraud

or collusion between Seymour and Eastwood, officers of the defendant, San Joaquin Electric Company, and the bondholders at whose request said suit was commenced and prosecuted, with regard to the proposed re-organization of said defendant company.

6. Said Court erred in holding that the default in payment of interest by the defendant company, as alleged in the bill of complaint, was not on account of collusion between the officers of the defendant and the bondholders by whom said foreclosure proceedings were brought about, or their representatives.

Wherefore, the said A. Y. Chick and William Flanders Lewin pray that the decree and order of the said Circuit Court of the United States, Ninth Circuit, Southern District of California, dismissing the bill in intervention of the appellants be reversed.

LOUIS A. GROFF,  
JOHN D. WORKS,  
BRADNER W. LEE,  
LEWIS R. WORKS,  
Counsel for Appellants.

[Endorsed]: Original. No. 916. U. S. Circuit Court, Ninth Circuit, Southern District of California. Mercantile Trust Company vs. San Joaquin Electric Company. Assignment of Errors. Filed October 28, 1901. Wm. M. Van Dyke, Clerk. L. A. Groff and Works & Lee, Rooms 420 to 425 Henne Building, Los Angeles, Cal., Solicitors for Intervenors.

*In the Circuit Court of the United States, Ninth Circuit,  
Southern District of California, Southern Division.*

MERCANTILE TRUST COMPANY,  
Complainant,  
vs.  
SAN JOAQUIN ELECTRIC COM-  
PANY,  
Defendant,  
ALFRED YOUNG CHICK and WILL-  
IAM FLANDERS LEWIN, Copart-  
ners Under the Firm Name and Style  
of A. Y. CHICK & COMPANY,  
Intervenors.

**Bond on Appeal.**

Know all men by these presents, that we, Alfred Young Chick and William Flanders Lewin, copartners doing business under the firm name and style of A. Y. Chick & Company, as principals, and The American Bonding and Trust Company of Baltimore City, a corporation, having its principal place of business in the city of Baltimore, State of Maryland, having a paid-up capital and surplus of \$1,300,000.00, duly incorporated under the laws of said State, for the purpose of making guarantee or becoming surety upon bonds or undertakings as required or authorized by law, and licensed by the insurance commissioners of the State of California, and having complied with all the requirements of the laws of said State of California regulating the formation

or admission of such corporations to transact such business in said State (C. C. P. 1056-57), as surety, are held and firmly bound unto the above-named plaintiff, Mercantile Trust Company, and the above-named defendant, San Joaquin Electric Company, in the penal sum of three hundred dollars (\$300.00), to be paid to the said parties, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents, sealed with our seals and dated the 28th day of October, in the year of our Lord, 1901.

Whereas the above-named intervenors, Alfred Young Chick and William Flanders Lewin, copartners doing business under the firm name and style of A. Y. Chick & Company, have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the Judge of the Circuit Court of the United States, for the Ninth Circuit, Southern District of California, Southern Division.

Now, therefore, the condition of this obligation is such that if the above-named Alfred Young Chick and William Flanders Lewin, copartners doing business under the firm name and style of A. Y. Chick & Company, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, then

this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

A. Y. CHICK, |

WILLIAM FLANDERS LEWIN,

By WORKS & LEE,

Their Attorneys.

THE AMERICAN BONDING AND TRUST COMPANY  
OF BALTIMORE CITY,

[Seal] By E. T. DUNNING,

Vice-President.

Attest: WM. DIETERLE,

Assistant Secretary.

Sealed and delivered and taken and acknowledged  
this — day of —, 1901, before me.

\_\_\_\_\_  
Notary Public.

Approved:

OLIN WELLBORN,

Judge.

[Endorsed]: Original. No. 916. U. S. Circuit Court,  
Ninth Circuit, Southern District of California. Mercan-  
tile Trust Company vs. San Joaquin Electric Company.  
Undertaking on Appeal. Filed October 28, 1901. Wm.  
M. Van Dyke, Clerk. L. A. Groff and Works & Lee,  
Rooms 420 to 425 Henne Building, Los Angeles, Cal.,  
Solicitors for Intervenors.

At a stated term, to wit, the July term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Monday, the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and one. Present: The Honorable OLIN WELLBORN, District Judge.

THE MERCANTILE TRUST COMPANY, as Trustee,

Complainant,

vs.

SAN JOAQUIN ELECTRIC COMPANY,

Defendant,

ALFRED YOUNG CHICK and WILLIAM FLANDERS LEWIN, Copartners Under the Firm Name and Style of A. Y. CHICK & COMPANY,

Intervenors.

No. 916.

### Order Allowing Appeal and Fixing Amount of Bond.

On motion of John D. Works, Esq., of counsel for Alfred Young Chick and William Flanders Lewin, copartners under the firm name and style of A. Y. Chick & Company, intervenors herein, it is ordered that the appeal of said intervenors, Alfred Young Chick and William Flanders Lewin, copartners under the firm name and style of A. Y. Chick & Company, from the order and decree entered by said court on the 3d day of Septem-

ber, 1901, in the above-entitled proceedings, to the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same hereby is allowed, and that a transcript of the record and proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit; it is further ordered that the amount of the bond to be given by the appellants be, and the same hereby is, fixed at three hundred (300) dollars, and that the bond in that amount tendered by the appellants, be, and the same hereby is, approved.

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*In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California.*

THE MERCANTILE TRUST COMPANY, as Trustee,

Complainant,

vs.

SAN JOAQUIN ELECTRIC COMPANY,

Defendant,

ALFRED YOUNG CHICK and WILLIAM FLANDERS LEWIN, Copartners Under the Firm Name and Style of A. Y. CHICK & COMPANY,

Intervenors.

No. 916.

**Clerk's Certificate to Transcript.**

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit,

in and for the Southern District of California, do hereby certify the foregoing three hundred and nineteen (319) typewritten pages, numbered from 1 to 319, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record, pleadings, opinion of the Court, papers, assignment of errors, and of all proceedings in the Matter of the Intervention of Alfred Young Chick and William Flanders Lewin, copartners under the firm name and style of A. Y. Chick & Company, in the above and therein-entitled cause, and that the same together constitute the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in said cause.

I do further certify that the cost of the foregoing record is \$176.75, the amount whereof has been paid me by Alfred Young Chick and William Flanders Lewin, copartners under the firm name and style of A. Y. Chick & Company, the intervenors and appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 12th day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

[Seal]

WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.



[Endorsed]: No. 782. In the United States Circuit Court of Appeals for the Ninth Circuit. Alfred Young Chick and William Flanders Lewin, Copartners Under the Firm Name and Style of A. Y. Chick & Company, Appellants, vs. The Mercantile Trust Company and The San Joaquin Electric Company, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California.

Filed December 16, 1901.

F. D. MONCKTON,

Clerk.

